

London Higher Response to Consultation on HE Reform

Introduction:

This document provides London Higher's response to the Department for Education's consultation on [HE Reform](#), published on the 24 February, for response before 06 May 2022.

This consultation response was created after extensive discussion with the London Higher membership and seeks to represent the diversity of London HE.

Student Number Controls

Question 1: What are your views of SNCs as an intervention to prioritise provision with the best outcomes and to restrict the supply of provision which offers poorer outcomes? Please explain your answer and give evidence where possible. If you consider there are alternative interventions which could achieve the same objective more effectively or efficiently, please detail these below.

London Higher does not believe that SNCs would achieve the aims set out in the consultation to be an effective intervention in maintaining and strengthening the international standing of the UK's higher education system, nor will SNCs improve life outcomes and social mobility for students. We believe that SNCs would undermine the higher education system in six key ways:

First, the introduction of SNCs based upon the OfS' proposals for minimum thresholds for student outcomes doubles down on the significant limitations inherent in these proposals that London Higher has highlighted in the consultation on Student Outcomes (full response [here](#)). Our primary concern regarding the use of Student Outcomes is that it uses narrow economic metrics to define high-quality provision in higher education, rather than a measure of 'distance travelled', or a more holistic measure of the social and societal benefits conferred by higher education. This penalises those institutions who undertake the 'heavy lifting' of improving social mobility (many of which are found in London) and undermines the government's own 'levelling up' agenda. In order to reduce risk within the proposed regulatory framework and therefore being subject to SNCs, providers are incentivised to reduce recruitment from those groups who incur the greatest risk. This directly contradicts the Access and Participation agenda, preventing disadvantaged students from making particular course choices, while still allowing affluent students who study economically 'unproductive' courses at more highly selective universities, which are less likely to be restricted by SNCs, to do so. This risks undermining the government's commitment to ensure that those from underrepresented groups are able to access, participate and succeed in higher education. London Higher wholeheartedly supports work focused on improving student outcomes, however, we do not believe that limiting access to higher education is the way to achieve this.

Second, and linked to the impact on disadvantaged students, SNCs do not reflect the importance of local provision, in particular for mature and part-time students and some of the most disadvantaged learners. Closing or limiting local provision will negatively impact students even if a 'higher quality' course is available further away because these students are not going to be in a position to commit to enrol at non-local providers. Students who choose local provision over more distant courses that may have higher employability outcomes could be making the best choice for their needs in line with their availability and responsibilities.

Third, SNCs limit the supply of higher education, whilst quality vocational and technical pathways remain an aspiration rather than a reality. Demand for higher education has continued to grow in recent years, despite a demographic dip in 18 year olds and this has primarily been driven by an increase in students from previously underrepresented groups progressing to higher education. [Research from the Higher Education Policy Institute \(HEPI\)](#) also shows that demand for higher education is set to grow further yet, with London and the South-East projected to see the greatest increase in places required by 2035, [primarily because they take the greatest numbers of students from the London region where more disadvantaged and underrepresented students are going to university than ever before.](#) Limiting progression to higher education before demonstrable progress has been made in increasing the quality of vocational and technical qualifications risks closing pathways for students without providing a viable quality alternative. Previous attempts by the government to sophisticatedly foresee the precise numbers of graduates in each subject the economy will need in the future have been unsuccessful to date. Intervening within this marketplace where DfE does not agree with the decisions made by providers and students appears to undermine the very nature of this marketplace, and moves towards a planned higher education economy.

Fourth, SNCs risk being – or being seen to be – politicised, reflecting narrow and changing government agendas. For example, SNCs based on subjects risk the penalisation of creative subjects which are not currently seen as a priority for this government, yet are a significant contributor to London’s economy. According to analysis from the Greater London Authority (GLA), prior to the Covid-19 pandemic, London’s creative economy was [worth £58bn a year](#) and accounted for one in six jobs in the capital. Cutting off the supply of creative graduates for a key sector of London’s economy, therefore, risks damaging a core part of the capital’s and nation’s fastest growing industries. (A recent [London Higher report](#) describes the value of London’s creative higher education provision to the nation in more detail).

Fifth, the implementation of SNCs increases the regulatory burden surrounding higher education at a time when there is professed aim to reduce this burden for providers. Many of the suggested approaches appear to suggest regularly changing SNCs (and indeed, this would be necessary to avoid stagnation in the sector), the creation and implementation of which would require significant capacity from both individual providers and the DfE. London Higher would welcome a system which reduces, rather than increases regulatory burden, and reflects the administrative capacity of both the regulatory body and government.

Moreover, if SNCs are introduced per subject, this will disproportionately impact the administrative burden on small subject areas. It will impact both their ability to continue existing and their ability to grow. There are many hundreds of subjects only available at undergraduate level at only one course in the country, from minority languages to culinary arts and specialist law pathways – many of which are offered by London-based providers. Working out how to set SNCs in some of these courses will present an enormous administrative burden and could lead to the forced closure of certain courses, which would lessen the diversity and vibrancy of the UK higher education landscape. Some courses which currently have low student numbers are expected to grow soon for reasons related to national strategic planning. One example of this is Chinese language and Chinese Studies, currently available at a relatively low number of British providers and concentrated at the highest tariff institutions. SNCs could limit the growth of this small but strategically important subject area.

Finally, we remain concerned at the number of ongoing consultations from both the OfS (Student Outcomes, TEF and Constructing Indicators) and the DfE (HE Reform and LLE) where wide-ranging

proposals have been presented, but the interaction between each is not made clear. For example, there is no clarity around how students moving between courses as outlined in government plans for the LLE, would interact with SNCs. London Higher would welcome further consideration over the timeline and interaction between each of the proposals.

Question 2: What are your views on how SNCs should be designed and set, including whether assessments of how many students providers can recruit should be made at: Sector level? Provider level? Subject level? Level of course? Mode of course? Please explain your answer and give evidence where possible.

London Higher does not believe that SNCs can be designed or set without significant negative impact upon students, providers and the entire sector. Therefore, we do not believe that it is productive to engage with this discussion and instead ask the government not to implement SNCs in any form at all.

Question 3: The Government is considering which outcomes should be used if SNCs are introduced and has identified the three broad categories as quantifiable, societal, and/or strategically important. What are your views of the merits of these various approaches to consider outcomes and/or do you have any other suggestions? Please explain your answer and give evidence where possible. (For further explanatory detail, please see pages 37- 40).

London Higher does not believe that the three broad categories of quantifiable, societal and/ or strategically important would be able to adequately reflect the diversity and complexity of higher education. This would also potentially incur significant additional regulatory burden, where providers would need to demonstrate how courses meet the criteria for these categories. Below, we set out concerns specific to each of the three categories, whilst also suggesting that the very nature of establishing such categorisations is problematic, bureaucratic and beset with unintended consequences.

With regard to a quantifiable category, we highlight that the proposed definition, which focuses on graduate salaries and professional employment, is currently a narrow, economic one. We have set out our concerns on this both: in Question 1 of this consultation; and in our [response to the OfS Student Outcomes consultation](#). SNCs would disproportionately impact disadvantaged students and providers who recruit more of these students. These are often the providers undertaking the heaviest lifting when it comes to the government's social mobility and levelling up agendas and are highly concentrated in London. A [recent IfS/Sutton Trust report](#) shows predominantly that the capital's least selective post-1992 universities are the greatest engines of social mobility in the country and are, therefore, set to be hardest hit by any moves to implement SNCs, irrespective of shape or form.

We welcome a broader definition of value in the inclusion of a societal category, however, we would suggest that this list would need to be broadened further to ensure that a wide range of courses which offer societal benefit are included.

London Higher is also concerned that any type of subject level SNC would inhibit innovation within subjects, as providers would be incentivised to focus allocated places upon courses which would not incur SNCs, rather than new subjects which are crucial to meet the changing skills needs of the population, bridge the skills gap and support the Levelling Up agenda – not to mention meet the requirements of the LLE which is also currently being consulted on.

The 'strategic importance' category on p.36 of the consultation does not appear to include a list of courses or subjects, but instead includes political slogans e.g. 'Build Back Better' and appears to be open to significant interpretation. We would welcome further clarity on what a course would need to do in order to meet these criteria.

The government cannot accurately forecast which degree courses will provide quantifiable, societal, or strategically important outcomes five or more years before the students affected by the resulting SNCs enroll at university. This can be exemplified with the inclusion of 'Building Back Better' within the 'strategically important'. Subjects which are now designed as 'Building Back Better' (whatever those might be) might be strategically important now, but we did not know we would need to 'Build Back Better' in 2018, when students due to graduate in 2022 were making their applications.

London Higher is concerned that there is no mention of languages within the strategic priorities or societal benefit category, despite the widespread concern regarding language provision, which is currently in freefall, and the need for a huge increase in the number of people speaking foreign languages to meet the Government's Global Britain ambitions. There is currently no guidance on how SNCs would impact upon joint honours courses, which would also disproportionately impact upon language provision, much of which is undertaken as a joint honours course.

Question 4: Do you have any observations on the delivery and implementation of SNCs, including issues that would need to be addressed or unintended consequences of the policy set out in this section? Please give evidence where possible.

London Higher does not believe that SNCs can be designed or set without significant negative impact upon students, providers and the entire sector. SNCs will incur significant unintended consequences, which by their very nature are difficult to identify at this stage. We ask the government not to implement SNCs.

Minimum Eligibility Requirements

Question 5: Do you agree with the case for a minimum eligibility requirement to ensure that taxpayer-backed student finance is only available to students best equipped to enter HE? Yes or No. Please explain your answer and give evidence where possible.

No, London Higher does not agree with the implementation of any form of minimum eligibility requirements (MERs). London Higher believes that MERs would exert a disproportionate and unjustifiable impact on many underrepresented groups and many of those with characteristics protected under equalities legislation. If such a policy was introduced, we believe it would have a significant negative impact upon the access and participation agenda, undoing the valuable work that many London higher education providers have been doing in recent years to support social mobility in the capital. It directly contradicts the government's own assertion that 'talent is everywhere, but opportunity is not,' as this is a measure that closes down opportunity for those that most need it.

Although these restrictions are being described as 'minimum eligibility requirements' focused upon restricting access to student finance, we suggest that this is disingenuous and that these restrictions are in fact akin to minimum entry requirements, as they determine the limit at which students can access student finance and loans. Moreover, minimum eligibility requirements suggest that students who are able to afford to finance their higher education through their own or family resources, irrespective of

minimum grades achieved, are privileged over students who have no other choice but to rely on student loans.

It is well documented that attainment at both GCSE and A Level has a strong socioeconomic gradient. In addition, particular underrepresented groups including some groups with protected characteristics have well-evidenced lower attainment levels at both GCSE and A Level. Proposed MERs at GCSE would lock out almost half (49.4%) of Free School Meal (FSM) eligible learners in outer London who do not achieve a grade 9-4 pass in English and maths at GCSE, 40.1% of Black pupils and 86.1% of special educational needs (SEN) pupils. Research from our AccessHE division also shows that if MERs were to be set at A-Level, then this would disproportionately affect London's Black African, Black Caribbean, Bangladeshi and Pakistani students, who are most likely to hold at least one 'E' grade. At [the 2011 census](#), London was the most ethnically diverse region in England, where 40.2% of residents identified with either the Asian, Black, Mixed or Other ethnic group. In fact, the total Black population of London stood at 1,101,688 and this is highly likely to have increased considerably over the past decade, so a significant proportion of prospective London students are set to be affected by the imposition of MERs. Moreover, with the Black population of London highly concentrated in South London, particularly in the four boroughs of Lambeth, Southwark, Lewisham and Croydon, any attempt to impose MERs would create a disproportionate geographical divide across the city, with those south of the river more likely to be restricted from accessing the means necessary to embark on higher education.

The government's own EIA states on p.19 that, 'Students with certain protected characteristics, such as students from black and ethnic minority groups and those with Special Educational Needs, are likely to be disproportionately impacted as they are less likely to achieve certain levels of prior attainment than other students.' [Research by Boliver and colleagues also suggests](#) that, whilst there is a relationship between prior attainment at Level 3 and success in higher education, over 50% of students entering with EEE grades are successful (p.3) and assert that, 'critically, non-zero chances of success, and especially chances of success above fifty percent, indicate that there is potential for successful study at degree-level for contextually admitted students, at least under certain conditions' (p.5.). [Nearly 700 Londoners who did not pass English or maths GCSE did go on to attain level 6 by age 26](#). Moreover, no provider or government can precisely identify which individuals will be successful within this group prior to them commencing higher education. This suggests that the introduction of MERs would represent a disproportionate means of reducing the burden to the taxpayer as it would prohibit opportunity to the most disadvantaged, despite evidence suggesting that these students can and do benefit from higher education.

As a result of this data and evidence we suggest that the proposals are in breach of the Equality Act and the Public Sector Equality Duty on the following grounds:

- (a) Far from eliminating unlawful discrimination, they indirectly discriminate against several significant groups of students.
- (b) They do not advance equality of opportunity, rather they decrease it.
- (c) Given their disproportionate adverse impact on particular groups, they will do nothing to foster good relationships between different groups.

We do not believe that any public authority having due, demonstrable and proper regard to its positive equality duties could adopt a policy of MERs.

We also believe that MERs contravene the European Convention on Human Rights, specifically Article 2 to the First Protocol (the right not to be denied access to an education) and the prohibition on discrimination under Article 14 .

In addition to the concerns regarding the contravention of equality legislation, the implementation of MERs represents a focus on a student deficit model (individuals not attaining particular grades), rather than the structural issues which must be tackled in order to improve student outcomes. This runs counter to the work of the new Director for Fair Access and Participation, John Blake. London Higher is proud that London's higher education sector leads the way across much of the access and participation agenda and we welcome the opportunity to work on the specific issues surrounding the success of particular groups, rather than the blanket exclusion of these students from higher education. Whilst London Higher recognises the drive as part of the Access and Participation agenda to improve attainment in schools, this responsibility does not lie solely or even predominantly with higher education institutions. Introducing MERs penalises students failed earlier on in their schooling, without allowing the lifeline that higher education often provides these students with, enabling those who have not achieved specific GCSE and A Level grades an opportunity to thrive in education at a later date.

Moreover, any moves to impose MERs will disproportionately impact upon lower tariff providers, many of whom have been recruiting students with grade portfolios below the proposed MERs over recent years and demonstrating strong outcomes. These providers often demonstrate strong outcomes in terms of social mobility and distance travelled, shown by multiple different metrics including the [Sutton Trust](#) and [HEPI](#). We suggest that we should be fostering a culture that rewards those institutions who support students to significantly improve their life chances, rather than those who select students from advantaged backgrounds.

MERs seek to limit the supply of higher education to particular groups, whilst quality vocational and technical pathways remain an aspiration rather than a reality. Imposing MERs whilst reducing funding for Foundation Years (discussed below) appears both to limit access to Level 6 higher education and viable pathways to this. Before closing off pathways to particular groups, London Higher urges the government to ensure that meaningful alternatives are established and evaluated to demonstrate that these provide viable options for those students other than higher education. To assess progression routes and opportunity gain thoroughly, this will require a considerable longitudinal study of the impacts on different student groups, not a simple short-term pilot.

London Higher would welcome clarity on whether alternative qualifications, such as Functional Skills courses would be recognised in meeting MERs. There is also no mention of BTEC qualifications, despite the fact that 20% of London of students who currently progress to higher education do so with a BTEC qualification and, regardless of whether these are defunded in the coming years, will continue to hold these qualifications.

The blanket imposition of MERs does not reflect the variation in skills required for different courses. All higher education providers set minimum entry requirements for courses where they deem it to be required in order for students to succeed. This allows for a holistic, nuanced approach to success which considers the needs of learners on specific courses – and for some disciplines also allows providers to put more weight, for example, on pre-admissions auditions or portfolios, as appropriate. Where these institutional or course level requirements are not successful, the current OfS proposals will already see

regulatory action taken against these institutions and courses. Centrally imposed MERs therefore provide a blanket solution to a highly nuanced landscape, where much of the provision is deemed excellent and students who currently do not achieve the proposed MERs experience life-changing benefits.

Question 6: Do you think that a grade 4 in English and maths GCSE (or equivalent), is the appropriate threshold to set for evidence of skills required for success in HE degree (L6) study, managed through their eligibility for student finance? Yes or No. Please explain your answer and provide reference to any pedagogical or academic sources of evidence to explain your reasoning.

No. As discussed in Question 5, it is well documented that attainment at both GCSE and A Level has a strong socioeconomic gradient. In addition, particular underrepresented groups including some groups with protected characteristics have well-evidenced lower attainment levels at both GCSE and A Level. Proposed MERs at GCSE would lock out almost half (49.4%) of Free School Meal (FSM) eligible learners in outer London who do not achieve a grade 9-4 pass in English and maths GCSE, 40.1% of Black pupils and 86.1% of special educational needs (SEN) pupils.

In the current environment, students who fail maths or English GCSE in Year 11 are [unlikely to pass a resit](#). Given low success rates of resits, MERs at GCSE would condemn many young people to a cycle of failure with no progression pathway to higher education. It is also unrealistic to assume that these students will be “ready” to embark on higher education at a later stage in their lives even with the LLE that is also currently being consulted on because, [as evidence shows us](#), for many people leaving school without going on to tertiary education, life gets in the way and caring commitments, work and other social pressures act as barriers to prevent them from re-entering education as adults. [New research for the GLA](#) also finds that disabled people disproportionately face barriers to adult education in London, so preventing them from entering higher education through MERs at age 18 where they would receive high-quality, tailored wraparound support from providers risks violating the spirit and the letter of equalities legislation.

The government’s own EIA states on p.19 that, ‘Students with certain protected characteristics, such as students from black and ethnic minority groups and those with Special Educational Needs, are likely to be disproportionately impacted as they are less likely to achieve certain levels of prior attainment than other students.’

As a result of this data and evidence we suggest that the proposals are in breach of the Equality Act and the Public Sector Equality Duty on the following grounds:

- (a) Far from eliminating unlawful discrimination, they indirectly discriminate against several significant groups of students.
- (b) They do not advance equality of opportunity, rather they decrease it.
- (c) Given their disproportionate adverse impact on particular groups, they will do nothing to foster good relationships between different groups.

We do not believe that any public authority having due, demonstrable and proper regard to its positive equality duties could adopt a policy of MERs.

We also believe that MERs contravene the European Convention on Human Rights, specifically Article 2 to the First Protocol (the right not to be denied access to an education) and the prohibition on discrimination under Article 14.

Question 7: Do you think that two E grades at A-level (or equivalent) is the appropriate threshold to set for eligibility to student finance, to evidence the skills required for success in HE degree (L6) study? Yes or No. Please explain your answer and provide reference to any pedagogical or academic sources of evidence to explain your reasoning.

No. As discussed in Question 5, [research by Boliver and colleagues suggests](#) that, whilst there is a relationship between prior attainment at Level 3 and success in higher education, over 50% of students entering with EEE grades are successful (p.3) and assert that, ‘critically, non-zero chances of success, and especially chances of success above fifty percent, indicate that there is potential for successful study at degree-level for contextually admitted students, at least under certain conditions’ (p.5.). Moreover, no provider or government can precisely identify which individuals will be successful within this group prior to them commencing higher education. This suggests that the introduction of MERs would represent a disproportionate means of reducing the burden to the taxpayer as it would prohibit opportunity to the most disadvantaged, despite evidence suggesting that these students can and do benefit from higher education.

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We also believe that MERs contravene the European Convention on Human Rights, specifically Article 2 to the First Protocol (the right not to be denied access to an education) and the prohibition on discrimination under Article 14.

Question 8: Do you agree that there should there be an exemption from MERs for mature students aged 25 or above? Yes or No. Please explain your answer and give evidence where possible.

Yes. London Higher welcomes the proposed exemption for mature students from MERs, whilst maintaining that MERs in any form would exert a disproportionate and unjustifiable impact on many underrepresented groups and students with characteristics protected under the Equality Act. If such an MER policy was introduced, we believe that it would have a significant negative impact upon the access and participation agenda, undoing the valuable work that many London higher education providers have been doing in recent years to support social mobility in the capital.

London Higher suggests that should MERs be introduced, the aged categorisation for a mature student should be in line with the OfS' classification of 21.

Question 9: Do you think there should be an exemption from MERs for part-time students? Yes or No. Please explain your answer and give evidence where possible.

Yes. London Higher welcomes the proposed exemption for part-time students from MERs, whilst maintaining that MERs in any form would exert a disproportionate and unjustifiable impact on many underrepresented groups and many students with characteristics protected under the Equality Act. If such a MER policy was introduced, we believe that it would have a significant negative impact upon the access and participation agenda, undoing the valuable work that many London HEIs have been doing in recent years to support social mobility in the capital.

Question 10: Do you agree that there should be an exemption to the proposed MERs for students with existing level 4 and 5 qualifications? Yes or No. Please explain your answer and give evidence where possible.

Yes. London Higher welcomes the proposed exemption for students with existing level 4 and 5 qualifications from MERs, whilst maintaining that MERs in any form would exert a disproportionate and unjustifiable impact on many underrepresented groups and many students with characteristics protected under the Equality Act. If such a policy was introduced, we believe it would have a significant negative impact upon the access and participation agenda, undoing the valuable work that many London HEIs have been doing in recent years to support social mobility in the capital.

Question 11: Do you agree that there should be an exemption from any level 2 eligibility requirement to level 6 study for students with good results at level 3? Yes or No. Please explain your answer and give evidence where possible.

Yes. London Higher welcomes the proposed exemption from any level 2 eligibility requirement to level 6 study for students with good results at level 3, whilst maintaining that MERs in any form would exert a disproportionate and unjustifiable impact on many underrepresented groups and many students with characteristics protected under the Equality Act. If such a policy was introduced, we believe it would have a significant negative impact upon the access and participation agenda, undoing the valuable work that many London HEIs have been doing in recent years to support social mobility in the capital.

Question 12: Do you agree that there should be an exemption to MERs for students who enter level 6 via an integrated foundation year, or who hold an Access to HE qualification? Yes or No. Please explain your answer and give evidence where possible.

Yes. London Higher welcomes the proposed exemption for students who enter level 6 via an integrated foundation year, or who hold an Access to HE qualification, whilst maintaining that MERs in any form would exert a disproportionate and unjustifiable impact on many underrepresented groups and students with characteristics protected under the Equality Act. If such an MER policy was introduced, we believe that it would have a significant negative impact upon the access and participation agenda, undoing the valuable work that many London HEIs have been doing in recent years to support social mobility in the capital.

If MERs were to be introduced, London Higher suggests that this would require an expansion of the existing Foundation Year programme, to provide meaningful support to those students who would otherwise be excluded from higher education. This runs contrary to the proposals set out later in the consultation to reduce funding for Foundation Year programmes. An expanded discussion around Foundation Years can be found in Question 14.

Question 13: Are there any other exemptions to the minimum eligibility requirement that you think we should consider? Yes or No. Please explain your answer and give evidence where possible.

London Higher believes that MERs would exert a disproportionate and unjustifiable impact on many underrepresented groups and many students with characteristics protected under the Equality Act. If such a policy was introduced, we believe it would have a significant negative impact upon the access and participation agenda, undoing the valuable work that many London higher education providers have been doing in recent years to support social mobility in the capital. As a result, we do not think the implementation of MERs in any capacity is appropriate.

Foundation Years

Question 14: Do you agree with reducing the fee charged for foundation years in alignment with Access to HE fees? Yes or No. Please explain your answer, providing evidence where possible.

No. London Higher believes that reducing the fee charged for Foundation Years would be detrimental to both students and providers and would lead to the cessation of some Foundation Year provision, the reduction in quality of others, a reduction in essential wraparound student support, and an overall negative impact upon student outcomes. London Higher welcomes the retention of Foundation Year provision in some form, however, the proposal to reduce the fee charged would mean that for many subjects, this provision would become unviable (as evidenced in TRAC) because not all providers have the means to make up the shortfall and effectively cross-subsidise Foundation Years provision from other areas of the organisation.

Foundation courses are disproportionately a pathway for those from underrepresented backgrounds to progress to higher education. In 2017/18, 32% of students on Foundation Years in universities came from the most disadvantaged backgrounds, up from 25% in 2011/12. Across ten institutions in the [Policy Perspective Network](#), which include Middlesex University London, students on Foundation Years were more likely to be male and from an underrepresented background; more likely to be from a BAME background; more likely to be from a disadvantaged or underrepresented background; and more likely to have a disability. A cut to Foundation Year fees will reduce the ability of institutions to offer students the wider services required in order to support them to succeed. This is particularly acute given the demographic of students on Foundation Years who typically require additional support to succeed.

Reducing funding risks creating a vicious cycle in which Foundation Years are not properly resourced to meet the needs of students, leading to a drop in student outcomes and potential regulatory action from the OfS, which results in the closure of this provision. As we have highlighted in our response to the OfS' Student Outcomes consultation, the proposals around regulating student outcomes will create an environment wherein institutions are disincentivised from continuing to offer courses that present a high risk of regulatory action. Such closures would significantly restrict access to higher education for many disadvantaged groups.

The comparison between Access Courses and Foundation Years fails to account for the increased success of Foundation Years as pathway to higher education. According to analysis from the OfS, [a higher proportion of students progress to a degree after taking a foundation year \(79%\) than following an Access Course \(62%\)](#). Foundation courses allow students who might not feel ready for degree-level study to [immerse themselves in university life](#), prepare for Level 4 study and begin to build networks which are important to both their wellbeing and progression into careers. The replacement of Foundation Years with Access courses fails to appreciate the hugely differing needs across different subjects and the significant variation in impact geographically.

Moreover, Foundation Years are reactive to local skills shortages and regional needs – they are [‘the personification of social mobility, of levelling up’](#). Foundation Years build the pipeline to Science, Technology, Engineering and Maths (STEM) courses and address skills shortages. Analysis by the OfS found that in 2017/18, Engineering and Technology was the second largest subject for entrants to Foundation Year courses (12% of entrants), followed by Biological Sciences (11%), with the largest area of provision being in Business and Administrative Studies (26%). Art Foundation Years have traditionally been a common route for those progressing onto specialist provision such as Fine Art and Visual Arts courses at undergraduate level. The impact of reducing funding and provision for this pathway is not discussed in the consultation.

Question 15: What would the opportunities and challenges be of reducing the fee charged for most foundation years, and of alignment with Access to HE fees? Please explain your answer, providing evidence where possible.

Reducing the fee charged does not present any opportunities as it results in significantly less money for providers to meet the complex needs of Foundation Years students. Despite their passion to take on and teach traditionally underrepresented students, some smaller, specialist providers without the means to fill the cost shortfall from other areas of the organisation will have no choice but to cease Foundation Years if they are to become loss-making.

Reducing funding risks creating a vicious cycle in which Foundation Years courses are not properly resourced to meet the needs of students, leading to a drop in student outcomes and potential regulatory action from the OfS, which ultimately results in the closure of this provision. As we have highlighted in our response to the OfS’ Student Outcomes consultation, the proposals around regulating student outcomes will create an environment wherein institutions are disincentivised from continuing courses which present a high risk of regulatory action. Such closures would significantly restrict access to higher education for many disadvantaged groups.

Question 16: Do you agree there is a case for allowing some foundation year provision to charge a higher fee than the rest? Or is there another way for government to support certain foundation years which offer particular benefits? Please explain your answer.

London Higher does not believe that Foundation Years should attract differing fees. As discussed in Q14, Foundation courses are disproportionately a pathway for those from underrepresented backgrounds to progress to higher education. They are reactive to local and regional skills shortages, directly contributing to the Levelling Up agenda. Differentiating funding by subject would not only lead to increased

administrative burden on institutions, but would undermine demand for courses seemed 'lower value on the basis of such funding, many of which provide vital pathways to further study.

Question 17: If some foundation year provision were eligible to attract a higher fee, then should this eligibility be on the basis of: particular subjects? Some other basis (for example by reference to supporting disadvantaged students to access highly selective degree-level education)? Please explain your answer.

London Higher does not believe that Foundation Years should attract differing fees.

National Scholarship Scheme

Question 18: What are your views on how the eligibility for a national scholarship scheme should be set?

London Higher welcomes the proposal to increase funding to support underrepresented students. However, we seek clarity on the definition of both 'talented' and 'disadvantaged' in this context. Extensive research demonstrates that attainment presents the largest barrier to progression to higher education and to highly-selective higher education. This has been highlighted by the Director for Fair Access and Participation, John Blake. A scheme which is only available to those disadvantaged (however this is defined) students who currently achieve the highest grades would only reach a very small number of students, the vast majority of whom already progress onto highly selective institutions.

London Higher would also note that 'Care Experienced' should be included as a specific eligibility criterion for this scheme.

In addition, we would welcome further detail on how such a scheme would differ from the previous National Scholarship Programme implemented from 2012-2015, and whether the previous scheme had demonstrable impact. It would be of particular importance for the DfE to provide evidence for the efficacy of this type of scheme, given the drive from the OfS to ensure that all institutions demonstrate the impact of their access and participation work through evaluation and evidence.

Finally, we seek reassurance that any national scholarship scheme would be accessible to all eligible students irrespective of where they live and choose to study in the country and that London students would have fair and equal consideration in the scholarship-awarding process. Given the priorities of the Government's 'Levelling up' agenda, we are clearly concerned that the relative affluence of London compared to other parts of the country can mask pockets of deprivation and high levels of student need, when in reality [poverty among young people is highest in London](#) (38%). It is therefore imperative that the government does not bring politics into play when opportunities for young Londoners are at stake and that it commits to publishing the criteria it intends to use to select the students that are to benefit from this scheme imminently.

Level 4 and 5 Courses

Question 19: How can Government better support providers to grow high-quality level 4 and 5 courses? You may want to consider how grant funding is allocated, including between different qualifications or subject areas, in your response.

London Higher welcomes government support to grow high-quality Level 4 and 5 courses across all areas, including existing provision with higher education as part of the drive to expand choice and flexibility for all learners. Across London there exists a vast diversity of Level 4 and 5 courses and any changes to the system should protect and enhance this existing provision. We are concerned that the scale and focus of the demand for further Level 4 and 5 provision from both students and employers remains unclear, and suggest further research needs to be undertaken to understand both the demand and the way in which this could and should be met. We are also concerned that the assertions made within the consultation regarding the benefits of Level 4 and 5 provision may have been overstated from the research which the claim appears to be based upon. On p.2 of the *'Post 18 Education – who is taking different routes and how much do they earn?'* (CVER 2020) states that 'the results are also heavily determined by some specific subject areas. For these reasons, it should not be assumed that massive expansion of sub-degree-level qualifications will yield similar returns to those reported here, especially if in different subject areas.' This suggests that the expansion of Level 4 and 5 on the basis of this evidence is premature and may not lead to improved outcomes for students.

London Higher notes that the expansion of Level 4 and 5 courses is currently set against a backdrop of curtailing of Level 6 provision through the proposals such as SNCs and MERs outlined earlier in this consultation. We note the comparatively smaller grant funding associated with Level 4 and 5 and question the motivations surrounding the limiting of Level 6 provision and the expansion of Level 4 and 5. Level 4 and 5 provision should also be understood in the context of the wider LLE and as such, we raise the challenges and opportunities in both consultation responses.

Partnership working between employers and Level 4 and 5 providers will be critical to the successful expansion of Level 4 and 5 provision. This should be region specific, beginning with local pilot programmes to better understand the way in which these partnerships and processes could work and to address local needs and skills shortages. As noted in London Higher's LLE consultation response, it is important that both employers and providers are part of these discussions. At London Higher, we are already part of a successful partnership model of this kind through the [Mayor's Academies Programme](#) alongside Middlesex University, the Capital City College Group and Film London, having come together to address specific skills shortages in the screen industries – a major contributor not just to the Greater London economy, but to the UK economy as a whole.

Although employer interests must be recognised across Level 4 and 5 provision and embedded into provision, [what we must ultimately guard against is creating a system that exonerates employers from the obligation to pay for training for their staff and puts the expectation firmly on to employees to take out an LLE for their own work-based training](#). This would effectively benefit employers and enhance their role as 'consumers' of the skills system, and certainly does not set individual employees up for better long-term career prospects. There is the very real risk in the creation of further Level 4 and 5 courses could add relatively little to individual learners' overall education, especially if they are not recognised as part of an established qualification framework.

Question 20: What drives price differences at level 4 and 5, where average fees in FE providers are significantly lower than in HEIs?

Price differences are partly driven by the experiences and qualifications of staff within the HE sector, who command higher salaries. Course fees also contribute towards providers' centralised student support and

experience offers, which ensure that students achieve good outcomes and are prepared for the next stage of their education or employment. Lower funding risks creating a vicious cycle in which Level 4 and 5 courses are not properly resourced to meet the needs of students, leading to a drop in student outcomes and potential regulatory action from the OfS, which results in the closure of this provision. As we have highlighted in our response to the OfS' Student Outcomes consultation, the proposals around regulating student outcomes will create an environment wherein institutions are disincentivised from continuing to offer courses that present a high risk of regulatory action.

Question 21: To what extent do the drivers of fees at levels 4 and 5 differ from those for level 6 (including between universities, further education colleges and independent providers)?

Current evidence of the Level 6 market suggests that students equate price with quality and therefore, all providers act to protect their reputation within a marketised system by charging the higher fees. Some evidence suggests that particular groups of students, for example mature students, are more debt averse than others and this should be taken into account as part of the wider system for delivering the LLE entitlement.

Higher education providers in England are already being financially penalised by the decision by the Department for Education to freeze fees for full-time students at £9,250 under the current student finance model, particularly at a time of rising inflation and increasing operating costs – and providers in London also need to factor in the recent loss of the London Weighting from the SPG, which has seen funding to the capital's higher education sector cut by over £64 million. In order to maintain investment facilities, as well as the quality of teaching and learning provision, providers have a strong incentive to charge the maximum fee.

Question 22: How can we best promote value for money in the level 4 and 5 market to avoid an indiscriminate rise in fees?

There are many existing mechanisms which seek to assure the quality of teaching provision and 'value for money' to the taxpayer and the student. The recent OfS proposals to monitor student outcomes seek to demonstrate the value of higher education in economic terms. London Higher has criticised these proposals as narrow in scope and failing to identify the full value of higher education to learners and society. This concern would extend to Level 4 and 5, whereby existing courses attract a diverse range of learners and proposed new provision would seek to expand this.

In the current environment of real term cuts to the funding of higher education, experienced particularly acutely in London due to the removal of the London Weighting, undercharging for Level 4 and 5 provision would reduce its appeal to providers and risk undermining the quality and success of any provision in this space.

Question 23: Which learner types are more or less price-sensitive and what drives this behaviour? As part of your response, you may want to specifically consider the learner cohorts described above and the equalities considerations set out in the level 4 and 5 section of the equality analysis document, published alongside this consultation.

Evidence suggests that some learners, particularly mature, part-time and those from some underrepresented groups, are more debt-averse and price sensitive than others.

London Higher suggests that both the independent and impartial IAG and maintenance support offered to these groups should be tailored with their specific needs in mind. In addition, IAG surrounding Level 4 and 5 provision should be expanded more broadly, in order to ensure that such provision was actively considered by potential students. We detail this further in our LLE Consultation response.

Question 24: What are your views on the current barriers, including non-financial barriers, that providers face in offering and marketing level 4 and 5 courses?

London Higher suggests there are four key barriers that providers face in offering and marketing Level 4 and 5 courses. First, ensuring that funding for such courses recognises the cost of establishing and delivering this provision is crucial to ensuring that the aims to expand all Level 4 and 5 provision are realised. In the current environment of real term cuts to the funding of higher education, experienced particularly acutely in London due to the removal of the London Weighting, undercharging for Level 4 and 5 provision would reduce its appeal to providers and risk undermining the quality and success of any provision in this space.

Second, we are concerned that the scale and focus of the demand for further Level 4 and 5 provision from both students and employers remains unclear, and suggest further research needs to be undertaken to understand both the demand and the way in which this could and should be met. Whilst we strongly support the increased flexibility and choice that the LLE and expanding choice at Level 4 and 5 offers, this needs to be underpinned by an understanding of the nuanced demand for this at a regional and local level.

Third, in establishing Level 4 and 5 provision, the awareness and engagement of employers must be increased in order to ensure qualifications at this level are recognised and appropriately utilised. Efforts to do so should be supported by government as well as providers in order to establish viable pathways for Level 4 and 5 provision into employment. Current recruitment practices, focused on a binary 'graduate' and 'non-graduate' divide would need to be significantly nuanced in order to make Level 4 and 5 courses appealing to learners.

Finally, there needs to be a fundamental change in how we understand and recognise Post-16 learning. For the potential of the LLE and specifically, Level 4 and 5 provision to be appropriately valued, learners must be supported to 'step on' and 'step off' their education journey at different points and take different pathways, without penalty to either the student or provider.

Question 25: We want to ensure that under a flexible study model, learners studying HTQs still develop occupational competence. We also want the quality and labour market value of individual higher technical modules to be signalled. Which of the approaches below, which could be introduced separately or together, do you prefer for delivering these aims, and why? Introducing requirements for each module to be individually assessed and/or for students to complete a summative assessment at the end of a qualification; awarding bodies submit qualifications with a modular structure and the Institute carry out an assessment of the quality of individual modules to provide assurance of their value to learners and employers; an Institute/employer-led process to develop a common modular structure for HTQs, to support credit transfer and labour market currency of modules.

London Higher supports the drive to ensure the higher education courses meet the needs of students and providers. However, we suggest such work is already undertaken between employers and providers. We

suggest that introducing additional, burdensome and unnecessary regulation will undermine the core aim of both the LLE and the expansion of HTQs, which is to increase flexibility for learners across the system and over the course of the lives.

Question 26: How would these approaches align or conflict with OfS and/or university course approval requirements?

London Higher consider these proposals to be unnecessary and significantly increasing the regulatory burden associated with such provision. This would risk deterring providers from entering or continuing to offer Level 4 and 5 provision.

Question 27: Are there any other approaches we should consider?

London Higher supports an appropriate and proportional risk-based approach which balances the needs of learners without creating over-burdensome regulatory requirements. The English higher education sector is currently considered world leading and higher education is a major export for the UK government. The consistent rhetoric around low value courses and the ongoing high profile focus on the minority of courses and providers where provision is deemed to be falling below particular standards risks unduly damaging public confidence both within England and internationally.

The significant increase in the regulatory burden incurred by the OfS proposals around student outcomes and the TEF should not be exacerbated further by LLE or HE reform proposed by the DfE.

Question 28: How should any of these approaches be applied to qualifications already approved as HTQs?

No response.

Further Information:

If you would like to discuss this consultation response further or require any further information, please contact Sally Burtonshaw, Senior Policy and Advocacy Officer at London Higher on sally.burtonshaw@londonhigher.ac.uk