

HEFCW Annual Regulatory Report

2022/23



Noddir gan
Lywodraeth Cymru
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Foreword

I am pleased to present our final Annual Regulatory Report as the Higher Education Funding Council for Wales, which sets out how we discharged our regulatory functions, during the 2022/23 academic year. This report has been approved by our Council following scrutiny from our Audit and Risk Assurance Committee, our Quality Assurance Committee and our Regulation Committee.

Our regulatory powers are specific and limited to certain aspects of regulated institutions' activity; therefore we are able to intervene only in matters that fall within the scope of our regulatory functions. As we deliver on those functions, we continue to work in partnership with the sector to improve practice, whilst continuing to challenge and support regulated institutions in accordance with our Corporate Strategy objectives and in line with our published regulatory approach. We recognise that the external environment that institutions are operating in are challenging and we have to be reasonable in our actions to take account of that. But at the same time we maintain our focus on protecting the interests of students and the public investment into higher education.

Regulatory functions that we have discharged since 1 August 2023 will be detailed in a future report but that report will be submitted by the new Commission for Tertiary Education and Research as it inherits our duty to regulate higher education in Wales. HEFCW will maintain robust and rigorous regulatory oversight until the point that we are no longer the regulator, and will enable a smooth transition to the Commission. We have invited members of the Commission Board to attend our Council and committee meetings to enable that smooth transition and will build expectations into our regulatory arrangements and approach that are informed by the Welsh Government's new regulatory system.



Rob Humphreys
Chair

Section 1 – Introduction

- 1.1 The Higher Education (Wales) Act 2015 (the 2015 Act) gained royal assent on 12 March 2015, enhancing the Higher Education Funding Council for Wales's (HEFCW) role as a regulator. The 2015 Act, supported by six sets of regulations, gradually came into force during a transitional period, which ended with the Act fully coming into force on 1 August 2017.
- 1.2 The 2015 Act sets out specific duties for HEFCW in the following areas:
- Student fee limits,
 - Improving equality of opportunity and promoting higher education,
 - Quality of education,
 - Financial affairs.
- 1.3 Institutions regulated under the Act must comply with HEFCW's directions in these areas. Institutional autonomy is made explicit in the Act and HEFCW's duties and powers of intervention are limited to only those areas set out in the Act, as set out in the paragraph above.
- 1.4 HEFCW's powers under the Further and Higher Education Act 1992 are not within the scope of this report.
- 1.5 One of the expectations on HEFCW is that it provides Welsh Ministers with an annual report on how it has exercised its functions by virtue of the Act at the end of each reporting period. This is the fifth report that we have submitted under this requirement and will cover the reporting period from 1 August 2022 to 31 July 2023. Functions that have been exercised after 31 July 2023, but relate to previous Fee and Access Plans, will be included in later reports.
- 1.6 Our report is set out in line with guidance issued by Welsh Ministers. Expectations set out in the guidance are that the annual report will include:
- An explanation of how HEFCW has discharged its functions under:
 - a) Section 7 – approval of Fee and Access Plans,
 - b) Section 15 – monitoring and evaluating compliance and effectiveness of Fee and Access Plans,
 - c) Section 17 – assessment of the quality of education provided by or on behalf of regulated institutions, and
 - d) Section 31 – monitoring compliance with the Financial Management Code.
 - The outcomes of the activities undertaken by HEFCW in discharging the functions listed above. This should include a summary of:
 - a) Fee and Access plan applications, approvals and rejections,
 - b) The regulated sector's compliance with fee limits and the general requirements of approved Fee and Access Plans,
 - c) Quality assessment reviews undertaken and the outcomes of those reviews, and
 - d) The regulated sector's compliance with the Financial Management Code.
 - Details of any failures by regulated institutions to comply with the requirements of the regulatory system and instances where HEFCW has used its intervention functions under:
 - a) Section 11 – compliance and reimbursement directions,

- b) Section 13 – directions in respect of a failure to comply with the general requirements of an approved Fee and Access plan,
 - c) Section 19 – directions in respect of inadequate quality,
 - d) Section 20 – other measures in respect of inadequate quality,
 - e) Section 33 – directions in respect of a failure to comply with the Code,
 - f) Section 34 – other measures in respect of failure to comply with the Code,
 - g) Section 37 – notice of refusal to approve a new Fee and Access Plan,
 - h) Section 38 – HEFCW’s duty to withdraw approval of a Fee and Access Plan if a regulated institution no longer satisfies the requirement of section 2(3)¹, and
 - i) Section 39 – HEFCW’s power to withdraw approval of an approved Fee and Access Plan.
- Details of the actions HEFCW has taken to resolve the regulatory failure in question and the progress made by the regulated institution in taking the necessary action; and
 - An assurance statement which includes an overview of the regulated sector’s compliance with the regulatory system laid down by the 2015 Act and highlights any areas of concern or risk.

1.7 This report has been structured into three main chapters to report against those areas Welsh Ministers expect to be covered: Fee and Access Plans, quality of education and financial affairs. There is also an Assurance Statement on our compliance with the regulatory system.

1.8 Throughout this report we will confirm whether there have been any failures by regulated institutions to comply with the regulatory system. We have taken three broad approaches to identify whether there have been compliance failures. These approaches are:

- Self-reporting by regulated institutions whether on an ad-hoc basis or through planned reporting cycles,
- Complaints received through HEFCW’s [complaints system](#) established to enhance its regulatory role, and
- HEFCW monitoring including formally through engagement with regulated institutions, discussions with other external bodies or monitoring data systems.

These approaches will be explained where relevant and as necessary throughout the report.

¹ Section 2 (3) of the Higher Education (Wales) Act 2015 sets out that a fee and access plan applicant must be an institution in Wales that provides higher education and is a charity.

Section 2 – Fee and Access Plans

2.1 Introduction

2.1.1 All institutions in Wales that wish to be regulated by HEFCW are required to have Fee and Access Plans approved by HEFCW. Becoming regulated enables qualifying students studying full-time undergraduate and PGCE QTS (Qualified Teaching Status) courses at that institution to access Welsh student support. Fee and Access Plans set out institutions' fee levels for full-time undergraduate and PGCE QTS provision for the academic year to which the plan relates and commitments to improving equality of opportunity and promoting higher education. On submission of a Fee and Access plan, an institution must demonstrate that it meets the regulatory requirements associated with a regulated institution, those being that they:

- are an institution,
- are wholly or mainly in Wales,
- provide higher education,
- are a charity,
- are financially viable,
- are financially well managed, and
- provide quality education.

2.1.2 The institutions with an existing Fee and Access Plan, and therefore regulated by HEFCW are:

- Aberystwyth University,
- Bangor University,
- Cardiff Metropolitan University,
- Cardiff University,
- Grŵp Llandrillo Menai,
- NPTC Group of Colleges,
- Swansea University,
- University of South Wales,
- University of Wales Trinity Saint David, and
- Wrexham Glyndŵr University

2.1.3 This section of the report sets out how HEFCW has discharged its functions in relation to Fee and Access Plans up until 31 July 2023 including:

- Amending its processes for Fee and Access Plans,
- Approving Fee and Access Plans,
- Ensuring compliance with applicable fee limits, and
- Monitoring compliance with, and evaluating the effectiveness of, Fee and Access Plans.

2.1.4 As referred to, in the introduction, we have amended our regulatory processes, including those related to Fee and Access Planning. This is reflected in our reporting below.

2.2 Discharging of functions in 2022/23

2.2.1 This section of the report sets out how we discharged all of our functions relating to Fee and Access Plans. This includes approvals to Fee and Access Plans, as well

as ensuring compliance with the fee levels and the general requirements of Fee and Access Plans

Monitoring and Evaluation of Fee and Access Plans

- 2.2.2 We are assured that all regulated institutions have taken all reasonable steps to comply with the general requirements of their respective 2022/23 Fee and Access Plans. However, there are areas we have identified require improvement.
- 2.2.3 We undertake our duty to evaluate compliance with and monitor the effectiveness of Fee and Access Plans through annual assurance returns, institutional engagement, reviewed institutional complaints to HEFCW and analysed relevant data including those held by the Higher Education Statistics Agency (HESA).

Areas for improvement

- 2.2.4 We have encouraged institutions to be more explicit in their documentation about where investment has not been as effective as envisaged and where enhancements can be made. We also set out that we expect institutions to be more active in highlighting the effective use of investment, where relevant, in the form of case studies.
- 2.2.5 We have undertaken additional monitoring and engagement with four institutions in Wales where we have identified, through our monitoring and evaluation, that further improvement is required in relation to the retention of students including those from under-represented groups.

Approval of Fee and Access Plans

- 2.2.6 In the previous reporting period we approved Fee and Access Plans at ten institutions, covering a two year period. During this reporting period we have not received any Fee and Access Plan applications. This was expected.

Compliance with fee levels

- 2.2.7 Regulated institutions can only charge fee levels for full-time undergraduate and PGCE QTS provision as set out in Fee and Access Plans approved by HEFCW. Once Fee and Access Plans have been approved we share the details of approved fee levels with the Student Loans Company. Fee levels vary.
- 2.2.8 We have monitored fee levels for full-time undergraduate and PGCE QTS provision set out in 2022/23 Fee and Access Plans through the analysis of Student Loans Company and Higher Education Statistics Agency data, any complaints received and discussions with regulated institutions.

2.3 Outcomes of activities in discharging functions

- 2.3.1 This sub-section of the report sets out the outcomes of having discharged our regulatory functions as they relate to Fee and Access Plans. This section covers the outcomes of approving Fee and Access Plans and our monitoring of compliance with fee levels and the general requirements of Fee and Access Plans.

Outcomes of approving Fee and Access Plans

2.3.2 All approved Fee and Access Plans have included groups identified as under-represented in higher education. Institutions' identify different groups as under-represented according to their mission and purpose and the groups listed below are indicative of the groups that will be supported by the equality of opportunity investment committed to in Fee and Access Plans:

- people of all ages living in the bottom two quintiles of Lower Super Output Areas of the Welsh Index of Multiple Deprivation,
- people of all ages from UK low participation neighbourhoods,
- care experienced young people,
- people of all ages with caring responsibilities,
- people of all ages with [protected characteristics](#),
- people of all ages from low income backgrounds, and
- people of all ages wishing to study Welsh medium higher education.

Outcomes of monitoring compliance with fee levels

2.3.3 As a result of discharging our functions to monitor fee levels charged at regulated institutions, we have not identified any excess full-time undergraduate and PGCE QTS fees charged by regulated institutions during 2022/23.

Outcomes of monitoring compliance with general requirements of Fee and Access Plans

2.3.4 We have not identified any instances during 2022/23 where a regulated institution has failed to comply with the general requirements of an agreed Fee and Access Plan.

2.3.5 In 2022/23, we received no complaints relating to compliance with the general requirements of Fee and Access Plans.

2.4 Failures to comply with the regulatory system and instances of intervention

2.4.1 No regulated institution has failed to comply with the regulatory requirements associated with a Fee and Access Plan. Therefore, there are no instances of interventions to report.

Section 3 – Quality of Education

3.1 Introduction

- 3.1.1 Under the 2015 Act, HEFCW is required to assess, or make arrangements for the assessment of, the quality of education provided in Wales by, or on behalf of, each regulated institution. The 2015 Act gives HEFCW powers regarding provision which is, or is likely to become, inadequate, with adequacy defined as meeting the reasonable needs of those receiving the education or undertaking the course.
- 3.1.2 HEFCW may issue or approve guidance regarding improving or maintaining the quality of education provided by, or on behalf of, regulated institutions, and about criteria for assessing quality. Prior to issuing or approving such guidance, HEFCW must consult the governing body of each regulated institution and any other persons HEFCW think appropriate. HEFCW was also required to set up a [Quality Assessment Committee](#) by the 2015 Act. Our QAC has provided advice to the Council on matters set out in this report as it relates to quality.
- 3.1.3 This chapter sets out how we have discharged our quality functions during the reporting period, up until 31 July 2023, as well as the outcomes of those functions determining whether regulated institutions have complied with the regulatory system.

3.2 Discharging of functions in 2022/23

- 3.2.1 Under the 2015 Act, HEFCW is required to consult the governing body of each regulated institution, and any other persons they deem appropriate, before issuing or approving guidance in relation to quality.
- 3.2.2 This section sets out how our quality functions have been discharged during the 2022/23 academic year.

External reviews

- 3.2.3 The Quality Assurance Agency for Higher Education was commissioned by HEFCW to conduct the external quality assurance and enhancement reviews to meet the Quality Assessment Framework's requirements. The purpose of these reviews is to meet public interest and ensure the standards of quality meets the baseline regulatory requirements.

Triennial visits

- 3.2.4 As part of HEFCW's responsibilities under the Framework, HEFCW conducts a triennial quality assurance visit to each regulated institution and reports on its findings. This focuses on issues covered by the annual quality assurance statements which are signed by the governing body. Each institution visited was given the opportunity to review the report for accuracy before it was considered by QAC and utilised by HEFCW's Council as part of its Institutional Visit. The outcomes of reviews were fed into other HEFCW processes, including fee and access planning and the annual institutional risk review process.

Complaints

- 3.2.5 Datasets relating to student complaints made to the Office for the Independent Adjudicator (OIA) are considered by HEFCW's QAC on an annual basis, with issues raised with institutions during triennial quality assurance visits and in specific follow-up activity by HEFCW.

Quality likely to become inadequate

- 3.2.6 HEFCW's QAC provided advice on issues relating to provision which is, or is likely to become, inadequate, in line with HEFCW's responsibilities under the 2015 Act, and provided advice to HEFCW as appropriate. These included the dissemination of examination results to students, compliance of ITE provision with Welsh Government accreditation criteria, and outcomes of quality reviews. QAC also considered information from institutions on how they manage cases of students not engaging with their studies.
- 3.2.7 QAC's advice informed action by HEFCW in relation to one institution, which resulted in a Concerns investigation being undertaken by the QAA on HEFCW's behalf; the outcomes of which have been published. The investigation made 12 recommendations based on a conclusion of serious issues found. An action plan from the institution has also been published.

Amendments to the Quality Assessment Framework

- 3.2.8 In 2022/23, the QAA consulted on changes to the [QER method](#) on HEFCW's behalf, informed by sector workshops and advice from HEFCW's QAC.

3.3 Outcomes of activities in discharging functions

- 3.3.1 This section sets out the outcomes of activities undertaken as a result of discharging our quality functions to assess or make arrangements for the assessment of the quality at regulated institutions.
- 3.3.2 Six reviews of regulated institutions were undertaken by QAA in 2022/23 and published on the QAA website. The outcomes of these reviews were satisfactory.
- 3.3.3 Two educational oversight reviews were carried out and were successful.
- 3.3.4 One triennial visit was conducted in 2022/23. HEFCW concluded that, whilst there were processes and mechanisms in place in order to provide some assurance to HEFCW on matters relating to quality and the student experience at this institution, there were a number of areas which would benefit from further consideration by the governing body.
- 3.3.5 HEFCW took action regarding quality likely to become inadequate at one institution in 2022/23.
- 3.3.6 In 2022/23 there were no eligible complaints received by HEFCW relating to quality.

3.4 Failures to comply with the regulatory system and instances of intervention

- 3.4.1 There were deemed to be no failures to comply with the regulatory system as it related to quality. HEFCW liaised with institutions, but did not need to implement the formal stages of the statement of intervention.

Section 4 – Financial Affairs of Regulated Institutions

4.1 Introduction

- 4.1.1 Section 27(1) of the 2015 Act requires that HEFCW prepare and publish a code relating to the organisation and management of the financial affairs of regulated institutions. Section 27(2) states that ‘The Code may make provision about the following matters (among others):
- a) circumstances in which a regulated institution is to enter into a transaction of a class specified in the Code only with the consent of HEFCW,
 - b) accounting and audit arrangements of regulated institutions, and
 - c) the provision of information to HEFCW.’
- 4.1.2 Section 27(4) of the 2015 Act requires that the governing body of a regulated institution must:
- a) comply with any requirement imposed by the Code, and
 - b) take into account any guidance contained in the Code.
- 4.1.3 This section of the report sets out how we monitored compliance with the Code in 2022/23.
- 4.1.4 As referred to in the introduction, we have continued with amended regulatory processes, including those related to the organisation and management of the financial affairs of regulated institutions. This is reflected in our reporting below.

4.2 Discharging of functions in 2022/23

Financial Monitoring

- 4.2.1 We undertook financial monitoring, including the review of each regulated institution’s financial statements and detailed financial forecasts. In the reporting period, full financial forecasts were analysed in late summer 2022, together with updated headlines to reflect actual student intake in autumn 2022, and audited financial statements in late 2022 and early 2023. We undertook regular engagement with Finance Directors, at least quarterly.
- 4.2.2 We reviewed the borrowing levels of institutions against agreed thresholds and where institutions wished to commit to borrowing in excess of these thresholds we undertook a formal process involving scrutiny of finances and governance processes to determine the appropriateness of proposals.
- 4.2.3 HEFCW monitored complaints received under its complaints processes about institutions’ procedures where they have a potential bearing on compliance with the Financial Management Code.

Institutional Risk Reviews

- 4.2.4 Through our Institutional Risk Review (IRR) process we conducted formal, bi-annual risk assessments of regulated institutions. A range of information drawn from the latest data returns and Council and officer engagements with institutions was used to risk-assess each one against six key areas – Governance and Management; Finances; Strategic Direction; Research and Knowledge Transfer; Students and

Quality; and Estates. An overall assessment was made through which each institution was rated as being at 'Low', 'Moderate' or 'High' exposure to risk. The definitions of these risk categories is as follows:

- Low risk: The institution is unlikely to fail to comply with the Financial Management Code.
- Moderate risk: The institution has, or may fail to comply with the Financial Management Code over the short to medium term, but the impact of this does not lead to sustainability concerns over that period.
- High risk: The institution has, or is likely to fail to comply with the Financial Management Code over the short to medium term, and the impact of this leads to sustainability concerns over that period.

4.2.5 We conducted a full IRR in Autumn 2022, with the outcomes considered by the Audit and Risk Assurance Committee in December 2022 and Council in January 2023. An interim IRR was undertaken in Spring 2023, with the outcomes of the full IRR considered the Audit and Risk Assurance Committee in June 2023 and Council in July 2023.

4.2.6 The outcomes of the IRR assessments undertaken by HEFCW during the reporting period were that:

- one institution was assessed overall as High risk;
- four institutions were assessed overall as Moderate risk, and
- five institutions were assessed overall as Low risk.

4.2.7 As a consequence of our risk assessments, we increased levels of engagement with the Heads and Senior Management Teams of those institutions rated as at 'High' risk and 'Moderate' risk, in order to gain assurance that the issues giving rise to our concerns were being urgently and appropriately addressed.

4.2.8 In addition, the Council has an established series of formal institutional meetings where Council members and officers meet each institution at least once every three years, providing a further opportunity for discussion of strategic matters with governors and senior management. Two regulated institutions were visited in 2022/23.

Financial Management Code

4.2.9 The Financial Management Code (the Code) requires HEFCW to keep the Code under review, and if appropriate, prepare and publish a revised Code. The Code was reviewed in 2022/23 and no revisions were identified.

4.3 Outcomes of activities in discharging functions

4.3.1 This section sets out the outcomes of our monitoring of compliance with the Code in the reporting period.

4.3.2 We were assured that that all institutions complied with the financial requirements set out in the Code. We obtained this assurance via engagement and scrutiny.

4.3.3 We did not undertake any reviews to increase borrowing application in 2022/23. We reduced borrowing limits for one institution to reflect a lapsed facility.

4.3.4 In 2022/23, one formal complaint was received by HEFCW and this complaint did not fall within our remit.

4.4 Failures to comply with the regulatory system and instances of intervention

4.4.1 There were no instances where formal intervention in respect of a failure to comply, or a likelihood of failure to comply, with the Code was required during the reporting period.

Section 5 – Statement of Intervention

- 5.1 A full [Statement of Intervention](#) is in place. The Statement outlines HEFCW's powers of intervention under the Higher Education (Wales) Act 2015.
- 5.2 The Statement of Intervention is kept under review by HEFCW's Regulation Committee. Areas of improvement to the Statement have been identified but do not materially change the basis on which we can regulate and will not have a material impact on Government policy. In light of intentions to dissolve HEFCW then it has been agreed that these enhancements should not be made at this time but that they should be considered, in the light of arrangements for transition to the new Register based regulatory system, by the new Commission for Tertiary Education and Research when it is established.

Section 6 – Assurance Statement

- 6.1 This section provides an annual assurance statement by the Higher Education Funding Council for Wales (HEFCW or the Council) to the Welsh Government on regulated institutions' compliance with the regulatory system laid down by the 2015 Act and highlights any areas of concern or risk.
- 6.2 The Council's assessment is that, across the regulated sector, institutions' compliance with the regulatory requirements imposed by the Higher Education (Wales) Act 2015 has been broadly satisfactory. Where particular issues were identified during the reporting period, the Council has pursued them rigorously with the institutions concerned, as noted above.