COMMENTARY

‘New providers’

The creation of a market in higher education

Andrew McGettigan

At the end of 2009, the Labour government commissioned a review panel, led by John Browne, formerly chief executive of the London-based oil and gas multinational BP, to report on the financing of higher education in England. Its basic remit was to devise a funding scheme that would open up more undergraduate degree places without placing additional burden on central public finances. Under the current arrangements, the Higher Education Funding Council for England (HEFCE, a quango managing the distribution of public money to universities) partially funds each place, but limits its annual outlay by imposing a total recruitment cap on each institution. These prevent universities from meeting the rising demand for student places: recent figures indicate that over 150,000 applicants can miss out each year with as many as 30,000 of them being suitably qualified.

In October 2010, the Browne review published its findings and recommendations as the report *Securing a Sustainable Future for Higher Education*.[1] At this time (end of March 2011), I had expected to be able to provide a commentary on the new coalition government’s comprehensive response to that report, but the promised White Paper has again been delayed. There is still no definite date, but we now know not to expect it before May. Its progress through Parliament is expected to conclude some time before the winter.

What has caused this delay? A combination of factors, but chiefly the need to fix a hole in the proposals for student loan financing; and additional preparation for the marketization of Higher Education in England. The government is now fully committed to removing the legislative restrictions that prevent new, cheaper operators from entering the sector. The potential threats are more far-reaching than commonly depicted and lessons need to be learned from the precedents set by the forms of privatization seen in the 1990s: chiefly, the *creation* of market conditions through direct intervention. Although the chief architect of the proposals, minister for universities and science David Willetts, envisages a mixed economy of ‘providers’ along the lines of that seen in the USA, he is aware that such an economy cannot spring fully formed from his head. To allow his ‘new providers’ to flourish, the established universities will be fettered in the short to medium term, mainly through the continued use of the institutional recruitment caps, until such a point as the newcomers are able to operate cheaply and competitively. There is now an urgent need to develop the nascent political forces that formed towards the end of 2010 to resist these proposals.

Student loans: finances and instabilities

It is widely accepted that Browne was forewarned of the government’s decision to slash HEFCE’s central teaching budgets (announced in November’s Comprehensive Spending

Review). By 2015, all support will be removed for the teaching of arts, humanities and social science degrees, although a consultation will begin in May on 'strategically important and vulnerable' subjects, which may include some modern languages. By recommending the abolition of the tuition fee cap – the maximum annual 'top-up' fees that English universities can charge undergraduates[2] – the loss from direct public funding was meant to be offset by the ability to charge higher fees. Backed by a government student loan scheme, the cost would be borne by the graduate – the private individual who benefits from study – with public money underwriting the risk should this education fail to represent value for money over a lifetime of subsequent earning.

Ignoring Browne's request that his recommendations be treated as a whole, the coalition government rejected the removal of this upper limit to what universities could charge. In December, a 'snap' parliamentary vote was called to set a new maximum of £9,000, to come into effect from 2012/13. A tactical means to curtail debate and avoid a prolonged campaign of opposition (which had the potential to split the coalition), the early vote used an existing statutory instrument to carry the most difficult political feature of the proposals: the tripling of fees, which the Liberal Democrats, now coalition partners, had pledged to abolish.

Here's the rub. That vote was carried without sight of any draft legislation, which might have been subject to scrutiny. Not only are the rates of interest and repayment terms still provisional, but a major element of the scheme has yet to be determined: although we have an understanding of the way in which the proposed student loan scheme will work, we do not know how many students will have access to it.[3]

The body responsible for administering the loan scheme served over 1.1 million students in 2009/10. From 2012/13, it will be opened to part-time students, who currently pay fees up front, and expanded in relation to students based at private institutions. With a likely threefold increase in fees paid by full-time students and a proposed increase in maintenance loans (up to £7,675 per year in London), we can see that the loan scheme is extremely large.[4] Willetts will therefore tell you that there are no 'cuts' to higher education because the government will be putting in more money – 10 per cent more is the figure cited – in order to underwrite the enormous outlay.[5] Those confused by why the expense of the loan scheme can be launched at a time of deficit reduction need to realize that under the government's accountancy conventions, student loans (which demonstrate a hypothecated income stream) do not appear as public spending.

The original Treasury costings for the scheme assumed an average tuition fee of £7,500 and it was assumed that the Office for Fair Access (OFFA) had the necessary legal powers to negotiate down the fee levels proposed by individual universities, thus maintaining some direct financial control. (Hence Willetts's initial assertion that only in 'exceptional circumstances' would universities be able to charge more than £6,000 per year.) However, OFFA has no such powers. Now, in the Guidance Letter to OFFA's director we see stressed the need to encourage universities to offer fee waivers rather than bursaries to poorer students as this reduces the Treasury burden.[6] This fundamental error in financial modelling has so delayed certain decisions on numbers that universities are already having to set their 2012/13 fee levels before the final student financing scheme has been approved.[7] There are obvious advantages to delaying the White Paper until these fees are known, so as to legislate in light of that information. This combines with the threat of a harder line if too many charge close to the maximum and has the potential benefit of allowing Willetts to present himself as the champion of future students by disciplining greedy universities.

It should also be mentioned here that the size of the loan outlay impacts upon certain structural features that make the scheme a potential liability for both individuals and the government. The loans proposed are 'income-dependent repayment loans' – this means that monthly repayments are determined by income not by the amount borrowed.

In particular, unlike most loans and mortgages, the period of repayment is therefore not determined in advance but is *open-ended*: a function of the ability of the monthly repayments to meet the initial amount borrowed (subject to interest rates). The government, following Browne, commits to writing off any outstanding balance after thirty years. This focus on the monthly repayments in government briefings means it must be understood as a tax, but one which incorporates a mechanism to limit the total contribution and which is better able to recoup money from EU students, who must be treated equitably when it comes to fees.

Modelling for the scheme indicates that this write-off is likely to be a substantial proportion of the loans given out. Willetts estimates 30 per cent of the overall loans made; Browne believed that 60–70 per cent of individuals would fail to repay the individual debt accessed. Both present this commitment to public funding of education *in the last instance* as the major contribution made by the taxpayer to higher education: underwriting individual debt. However, these models were developed by the Treasury without reference to the last-minute political concession granted to the Liberal Democrats before December's vote: index-linking the thresholds at which repayment begins (initially set at £21,000 in 2015) to annual wage-inflation. The overall average effect will be to *lower* repayments and hence increase the percentage of loans written off.[8] Since this threshold also determines the amount repaid monthly (and plays a part in determining the interest rate 'taper'), this concession alters the fundamental workings on the scheme and generates unintended macro-problems.

Whereas a *review* every five years (the initial idea for both Browne and Willetts) would allow adjustments *up or down* to maintain the overall sustainability of the scheme, the annual up-rating makes it harder to avoid unwanted effects: compound interest becomes a threat to the underwriters (initially, the government), not just the indebted individual. It is complex and volatile and therefore unappealing to potential third-party purchasers. This is one of the main reasons that the clauses sneaked unannounced into the 2011 Education Bill legislate for *commercial interest rates* on the new loans and allow the secretary of state to determine by fiat the administrative details. Student loans can also, of course, be sold off to third parties without notice and without consent.[9]

Student numbers

For these reasons the White Paper must propose a mechanism to manage student numbers and loan outlay. We have had some indication from Willetts of the likely approaches. First, there is the threat to defray any excessive cost of the loan scheme by reducing the rest of the higher education budget proportionately. This sabre-rattling is unlikely to unsettle those institutions which, in not offering STEM or priority subjects, will see most of their central funding already removed. Recent comments from Willetts are more alarming. When addressing the vice chancellors at the annual conference of Universities UK in February, he indicated that the current recruitment caps on universities will be maintained: 'It is simply not possible to remove all controls at this stage because we need to manage government spending.' Now, the Browne review was enthusiastically supported by many vice chancellors because in moving towards a market in higher education it dropped all 'supply side' restrictions – universities would be free to charge whatever price they wanted and recruit as many undergraduates as they were able (with restrictions only on subjects in receipt of central funding). We now see that this will not happen from 2012/13.

There are three separate but complementary approaches that the White Paper could address. The first two can be summarized relatively quickly. The third is more complicated.

1. *Core/margin model* Willetts has announced plans to consult on a 'core/margin' model regarding student numbers. What is this? Maintaining the basic recruitment

caps, it would create a pool of additional places for which all institutions can compete. This would seem to be a way to allow those universities which are seen to offer 'value for money' to bid for more places. That is, it would allow those charging less to expand.

2. *Up front/outside model* The caps are maintained but govern only students who can access the loan scheme. Universities would then be able to take on additional students so long as those students agreed to pay fees *up front*. The clearest statement on this option can be found in Willetts's latest comments on accountancy degrees sponsored by KPMG at Exeter and Birmingham – these students are outside 'student number controls'.[10] Besides such initiatives, it is in the Clearing process that such an option would have an impact: students who miss their offers at their first choice institution could be still offered a place if they pay up front. An inflection on this model currently being mooted involves providers paying a large flat fee up front to underwrite the risk of their students not repaying the loan: the first sign of trading in risks and derivatives in the sector.[11]
3. *Increasing competition* The government is committed to facilitating the entry of 'new providers'. Their function will be to provide a cheaper tier of deregulated provision to undercut the established universities, who will continue to be fettered by recruitment caps. With this in mind, the White Paper is likely to be as radical as those already published in Education and Health, as it will have to remove the current barriers impeding such expansion. In addition to its logistical advantages, the last option is ideologically desirable to Willetts: 'The biggest lesson I have learned is that the most powerful driver of reform is to let new providers into the system. They do things differently in ways none can predict.'[12]

The entry of the new providers

The new market conditions must first be created. A significant amount of intervention is required to bring about a 'level playing field' in which new, more commercial, operations can compete successfully to drive down costs. The first steps here have already been achieved. First, the complete removal of central funding to arts, humanities and social science degrees exposes the established provision to potential competition in a manner that gives the lie to Willetts's claim that the cuts have been 'scrupulously neutral'. (No new provider is currently planning to offer STEM degrees, which are expensive to run and require large overhead and start-up costs.) Second, students at private establishments have already been granted access to the student loans and grants. Reporting by *Times Higher Education* reveals that 'Almost 4,000 students at 60 private providers were granted loans by the Student Loans Company [SLC] in the 2010–11 academic year, including institutions that do not have degree-awarding powers.'[13] These numbers are currently outside of the recruitment caps and reviewed on a case-by-case basis by the SLC before approval from Willetts's department. Third, when viewed in conjunction with the new visa restrictions on overseas students (a political decision affecting an otherwise independent and substantial income stream) and the cuts just announced from HEFCE for the 2011/12 budget, we can conclude that universities are being softened up. Prior to a major reorganization of higher education these cuts are punitive and part of a concerted effort to destabilize the sector for the entry of new agents.

We can list, whether as actual contenders or likely types, the following:

1. *The University of Buckingham* The University of Buckingham is an important bellwether for assessing the impact of the higher education proposals. Buckingham is an *independent* liberal arts college incorporated as a non-profit-making company and registered as an educational charity. What is distinct is its independence, not its private corporate structure, which it shares with most universities in the UK. Since it

does not currently receive teaching funds from HEFCE, it is not bound by the tuition fee caps and is not required to participate in any access or widening participation initiatives. It offers intensive two-year degrees including subjects such as English, Law, History and Politics, for which it charges approximately £8,500 per year or £17,000 in total. According to *Times Higher Education*, around 200 of its current students have accessed student loans.

Its vice chancellor, Terence Kealey, was vocal in his opposition to Browne's proposals to regulate the entire sector, through a superquango, 'HE Council', bringing Buckingham into its ambit and removing its independence. The idea has been rejected: if Buckingham brings its fees *under* the equivalent of £6,000 per year for a three-year degree (or its students only sought to access that amount) its current status would seem to be preserved. That is, Buckingham's position reveals something distinct about the government's proposals: the lower threshold serves to demarcate a deregulated sector. All 'public' universities charging top-up fees are currently required to reach the equivalent access arrangements with OFFA. In the new conditions *only those charging over* £6,000 will. This encourages the entry of low-cost providers.

2. *Private, for-profit providers* Currently, there is only one company limited by shares (and hence potentially profit-making) with degree-awarding powers in the UK: BPP. It offers degrees in Business and Law. One of the first acts of Willetts after the election in May 2010 was to confer on BPP the protected title of 'University College'. Besides access to the loan scheme, which it now has, it has been lobbying to resolve a perceived disadvantage: unlike established universities, whose power to award degrees is granted in perpetuity, BPP is required to renew every six years those it has been granted. The White Paper is expected to address this imbalance. BPP is the forerunner to the entry of the large US education businesses, such as Apollo (who own BPP), Kaplan and Laureate.[14]
3. *Edexcel in combination with colleges* In February, Willetts announced a clear intention to grant degree-awarding powers to this privately owned examination board. This move would have the advantage of opening up a raft of new providers, teaching-only institutions, whose degrees would then be validated by Edexcel. Currently, FE colleges teach around 170,000 undergraduates under franchise arrangements with HE institutions. The new terrain is likely to see a conflict of interest here, with HE institutions restricted by recruitment caps withdrawing from these arrangements to consolidate centrally. Edexcel would have no such conflict of interest as it does no teaching of its own. Such a move would be popular among the Association of Colleges, whose chair, Martin Doel, has expressed strong resentment regarding the 'feudal' relations his members currently experience.

   This combination would be well placed to drive down costs. Doel estimates that his members could run a degree programme for under £5,000 per year. They have the capacity to allow rapid expansion in the sector and thereby provide significant competition in the medium term. The current legislative hurdle must also be addressed: Edexcel does not meet the conditions needed for degree-awarding powers to be granted. It has no 'well founded, cohesive and self-critical academic community that demonstrates firm guardianship of its standards'.
4. *Big Society University* Though not directly profit-oriented, Big Society University, announced by David Cameron, is likely to be the Trojan Horse for the worst aspects of marketization by the time it arrives in 2015 as an institute with degree-awarding powers.[15] A new charity, Locality, has won the initial £15 million tender from the Office for Civil Society to train 500 full-time organizers and 4,500 volunteers in collaboration with Manchester Metropolitan and Goldsmiths. We know we live in changing times when an organization citing Paulo Freire as its main influence wins such money from the Conservatives.[16]

5. *Globalized multinationals* Perhaps the most chilling utterance from Willetts is: 'The global higher education providers that operate in many countries from India to Spain to the USA need to know that we will be *removing the barriers* that stop them operating as universities here as part of our system – provided, of course, that they meet high standards which are a key feature of our higher education system.'[17]

When combined with the maintenance of recruitment caps, these five types of new provider have a potential seriously to damage the current provision. Their impact is generally underestimated as it is not appreciated how the government will protect them and support them in the first days of this new era, until they are able to compete. The current proposals also make it likely that one or more universities in England will go bankrupt. There will be no public money available to rescue such failures – one of the functions of Browne's HE Council was to act as administrator in such circumstances – but the assets of a university could well be attractive to venture capitalists. As I have pointed out elsewhere, 'There is currently no legislation to provide the framework whereby a private, for-profit company could take over a university and maintain the existing degree awarding powers. Removing this impediment to venture capital is a desirable object for think-tanks close to David Cameron, such as Policy Exchange… Again, we should expect the [delayed] Spring White Paper to facilitate such buyouts.'[18] Some universities may anticipate such possibilities with pre-emptive rationalization of courses. One should be suspicious of any London institution that sets its fees too far below the £9,000 maximum – bankruptcy is not necessarily an ending. Given the absence of endowments, English universities may investigate the option of moving to become companies limited by shares in order to access substantial private investment.[19]

What is proposed does not simply benefit small, niche operations but creates the conditions for 'creative chaos' similar to that to be unleashed on the National Health Service. In summary, stymieing the move to marketization will involve defending university standards by resisting efforts to alter the current legislation governing degree-awarding powers. The government still has a lot of work to do to effect its plans fully: a large part of our political strategy must be raising awareness of these potential points of resistance.

As mentioned, the 2011 Education Bill contains clauses allowing the government to set interest on the loans up to, and in certain circumstances exceeding, commercial rates. The coalition is still unstable around this faultline of student financing. Whether the scheme is or is not progressive was central to the political compromises needed to bring the Liberal Democrats on board, not least the last-minute concession to uprate the repayment thresholds annually. Ironically, this alteration seems to create certain 'undesirable' effects in the system. I would expect the Treasury to try to retreat from these commitments. Can the strength of the 2010 protests be focused around these parliamentary proceedings? The Bill is currently at the committee stage having had two readings in the House of Commons: it may have had made its way to the House of Lords by April.

Subsequently, the publication of the White Paper will be the occasion for a different approach. Universities previously rebuffed Labour's attempts to overhaul degree-awarding powers and we need that resistance again. Consequently, university autonomy is an important rallying point. Within this context, we need to move beyond the limited principles that previously defined autonomy as freedom from government interference: with respect to applications, the content and assessment of courses, and the appointment of staff. Within new market conditions, beyond this negative freedom, we already see the need to liberate certain courses from the effects of marketization. In March, Philosophy at Keele – now temporarily reprieved – nearly joined Middlesex in having its programmes closed. As I write, Philosophy at Greenwich and London Metropolitan are similarly threatened. Each of these cases has specific features, but the apparent vulnerability of Philosophy to current pressures needs urgent investigation.

This is a shared threat and one not helped by the National Union of Students' idea of becoming a consumer rights body. ('You want consumers? We'll be the consumers from hell.') It is increasingly apparent that many vice chancellors have realized that they are not getting the Browne review. Browne himself and David Eastwood, a member of the review, have already criticized the direction of the government's proposals. Solidarity for all concerned with higher education in Britain may have to suspend earlier resentments: we are faced with a common enemy.

Notes

1. *Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding and Student Finance* (12 October 2010). www.independent.gov.uk/browne-report.
2. £3,375 per annum in 2011/12, topping up the basic HEFCE allocation of £3,670 (excluding London weighting) for degrees the government assesses as cheapest to run, mostly arts and humanities (so-called 'Band D' subjects), which increases substantially for Science, Technology, Engineering and Medicine ('STEM' disciplines).
3. See the footnotes to the page of guidance available on the BIS's website: www.bis.gov.uk/policies/higher-education/students/student-finance.
4. The potential impact of this undergraduate debt on postgraduate and clinical study is now acknowledged to be such a problem that Willetts has had to reconvene Professor Adrian Smith's committee on postgraduate study.
5. Willetts to British Academy, 1 March 2011: 'there is still a lot of taxpayer money going into universities but in rather different ways … about £6.5 billion in tuition loans (on top of £2 billion of remaining teaching grant going to the high-cost subjects), £2 billion in maintenance grants and scholarships, and £3.5 billion in maintenance loans.' Willetts's speeches are collected at www.bis.gov.uk/news/speeches/minister/david-willetts.
6. Guidance Letter to OFFA §5.5–5.7: 'Where an institution wishes to include… 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.… *Previously there was an expectation that every institution would provide the poorest students with a minimum bursary … that expectation no longer applies*' (my stress). www.bis.gov.uk/assets/biscore/higher-education/docs/g/11–728–guidance-to-director-fair-access.
7. Those institutions, almost all, wishing to charge more than £6,000 are required to negotiate with OFFA to reach 'Access Agreements' covering outreach initiatives and support schemes for poorer students.
8. It is difficult to model the impact of RPI and wage inflation over the next thirty years. BBC figures commissioned from 'leading accountants' are misleading in so far as they assume wage inflation at 4 per cent and RPI of 2 per cent for the next thirty years (at March 2011, RPI was 5.5 per cent with wage inflation around 2.2–2.5 per cent). Such unlikely parameters mean their lifetime repayment figures offer only a basic lesson here in compound interest rates. On their model, the average annual salary comes in at around £78,000 by 2045. www.bbc.co.uk/news/education-12767850.
9. Tucked away in Part 8 are three clauses: one replaces the relevant clauses in the 1998 Higher Education Act so as to grant the secretary of state the power to set interest rates up to commercial levels; another alters the same passages of the 2008 Sale of Student Loans Act to allow third-party providers to charge commercial rates. For more detail, see Andrew McGettigan, 'Further Marketization in Higher Education: The Potential Sell-off of Student Loans', www.metamute.org/en/news_and_analysis/further_marketisation_in_higher_education_the_potential_sell_off_of_student_loans.
10. Willetts at *Guardian* HE Summit, 16 March 2011.
11. Nick Barr, Professor of Public Economics at LSE, has proposed levying an 'insurance premium' on those institutions wishing to charge more than £7,000 to mitigate against risk.
12. Willetts, Speech to Universities UK, 25 February 2011.
13. 'Public loan funding extends to modern-day Mary Poppinses, make-up artists and homeopaths', www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=415584&c=1.
14. See UCU's briefing, 'Subprime Education? A Report on the Growth of Private Providers and the Crisis of UK Higher Education', www.ucu.org.uk/media/pdf/k/l/ucu_subprimeed_briefing_sep10.pdf.
15. www.guardian.co.uk/politics/2011/feb/12/david-cameron-big-society.
16. www.dta.org.uk/whatsnew/hottopics/communityorganisers.
17. Willetts, speech to Universities UK, 25 February 2011.
18. Andrew McGettigan, 'In the Wings: Deregulation and Private, For-profit Providers in the Proposals for Higher Education', www.metamute.org/en/news_and_analysis/in_the_wings_deregulation_and_private_for_profit_providers_in_the_proposals_for_higher_education.
19. Matt Charles has identified this blind spot – dependency on endowments – in Martha Nussbaum's defence of the Liberal Arts. 'Carry on Campus', *Radical Philosophy* 166, March/April 2011, pp. 41–3.