Thesis: Doctor in Education (EdD)

UCL- Institute of Education

Regulating Academic Quality in English Higher Education between 2010 and 2014.

I hereby declare that, except where explicit attribution is made, the work presented in this thesis is entirely my own.

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Abstract

This thesis considers the development of regulation in English higher education between 2010 and 2014. This short period is significant in higher education's recent history because in this time regulation of higher education became established in a more explicit and transparent way. In the absence of a legislative framework, the regulatory approach to English higher education was outlined by the work of the Regulating Partnerships Group, through the development of its Operating Framework.

This study considers the following research question.

How has the consultative nature of the development of the UK Quality Code for Higher Education contributed to a basis for regulation in English higher education in the absence of a legislative framework?

The UK Quality Code for Higher Education provides a set of 'rules' for judging higher education through the creation of expectations about academic standards and quality. This study presents four narratives created from the responses to the consultations completed during the development of that code. Together the four narratives provide a picture of how the UK Quality Code for Higher Education contributed to the development of the regulatory landscape for English higher education.

This thesis argues that the consultative process used in developing the UK Quality Code for Higher Education helps to guard against producing criteria that are meaningless to a wider higher education community. Once established, this Code continued to contribute to a basis for regulation because it provided criteria for the review of academic standards and quality in English higher education provision. The thesis concludes by considering how the regulated (higher education providers) can play a critical part in producing criteria used for their own regulation by creating an environment of conformity based on reputational regard and civic community.

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Reflection

The journey to the submission of my EdD thesis was a long one. At my induction event someone said '…and life happens'. They were not wrong, it has, good and bad events, those helpful to my doctoral programme and those not. As a research student on a professional programme, when of necessity you are a professional, often that profession has to take priority. With responsibilities to both those who employ you and those you manage, however much you might want your own research to have your attention it cannot, not always. This is quite apart from the personal upheavals of everyday life. The years towards submission, for me, have been characterised by challenge but to have achieved a final submission worthy of examination using research from my professional work is in the end satisfying.

Within a challenging professional context, I had an ongoing relationship between my learning as part of the doctoral programme and my professional identity. This has challenged who I am and why I do what I do. The researcher identity is not always an easy alliance with working in a professional capacity but the EdD programme at the Institute of Education has encouraged me to develop and allowed me to explore different research techniques such as the practice of 'insider' research. These will continue to be useful as my career develops.

The first few years of the EdD programme and the taught courses allowed me academic space to work through the meaning of professionalism and what it meant to me to be a professional. It also was a time to be reminded of, and taught new, research methods. These early years culminated in the submission of a portfolio preparing the way for the research that followed. First, this was the smaller research project and, through the institution-focused study or IFS, I developed a researcher understanding of the organisation in which I worked, using a case study approach. This study provided the experience to understand the impact of 'insider' research on material I was used to using for professional purposes. In time, I was able to build on the work from my IFS to develop the research question for my thesis from my professional practice in developing the UK Quality Code for Higher Education.

Along the way, I have had to learn to turn my professional policy-writing abilities towards an academic style, often failing in this respect but learning to question those policy objectives with which I work in a professional capacity as a result. This is not to reject what I do but has made me a more engaged practitioner,

understanding why I do, or have to do, certain actions in particular ways. It has made me reflect more on the consequence of actions and question the wider impact of what I do. Of particular note has been learning how to deal with the flux of evidence provided by the internet in contrast to the consistency of printed matter. Today's policies and consultations are archived or gone tomorrow, while links are broken as organisations reshape and rebrand. Using and referencing the grey literature body of knowledge that such information contributes to through an existence in an electronic world only is a new phenomenon for me to understand and provided an element of my learning that has ultimately been useful to my professional self.

Indeed, the experience of studying towards a doctorate has influenced my practice; my written work has become more precise, possibly an irritation to those I work with, as my editorial skills have improved and my pickiness in relation to others' work has increased. This is a result of reading and writing academic papers.

However, mention of those I work with in my professional life emphasises the challenge, in particular, of my work on the thesis component of the doctorate. This is that as you work towards producing your doctorate, you work alone. In the world of professional practice, you rarely work in such isolation; the importance of team working is crucial, as it improves what you do or how you do it and offers those you work with and those you are providing a service for, the security of the best results. A thesis is an individual piece of work and is a rare thing in today's world and, consequently, a challenge to achieve. The areas you are less expert in require improvement as you learn to divide the component task of each element in the production of a thesis into manageable blocks. This process creates certain feelings of isolation but these can be counteracted in some ways by doctoral school support, although at times these activities can feel they are intruding on what you want to do when time is so short.

The production of a thesis has to be an individual activity to meet the criteria of production of 'original knowledge' but to do this requires time to assimilate and to process. Learning time that can compete with other professional or university activities, I had to learn a degree of selfishness to decide what was necessary for my learning and my journey to completion. I found this quite a difficult way to work but I think this skill will help me produce better quality work. Through the process of developing my thesis, I had to learn a confidence in academic practice. It has not

been an enjoyable process; the doubts and lack of confidence challenges to self through much of my time registered as a doctoral student have been difficult but the resultant production of something that is mine and of a story that needed to be recorded does indeed feel like an achievement and a worthwhile commitment of time.

In the following pages of my thesis, I have used work from my professional capacity to complete an analysis about regulating academic quality in English higher education between 2010 and 2014. By completing a secondary analysis of data made available to me as an employee of an organisation that I studied in more depth through the work of my IFS, I have completed a research project as presented in this thesis. Through the evidence I present in this thesis, I am contributing to professional knowledge on how higher education organises itself, functioning through the continual changes of policy direction. While the period of my study is both small in time and in geographical location, it provides an in-depth analysis of how the consultation process in the higher education sector can contribute to the way the sector functions. Through this detailed understanding, conclusions can be made about how future developments within the sector can be influenced.

Through completing the EdD programme and learning the skills of an academic researcher, as demonstrated through the completion of this thesis, I am in a better position to be able to understand, and even influence, further developments in higher education with future research contributions to the field.

Chapter one: Introduction

This study researches the following question.

How has the consultative nature of the development of the UK Quality Code for Higher Education contributed to a basis for regulation in English higher education in the absence of a legislative framework?

Regulation can be considered a way of achieving policy objectives (Kay, RPI conference papers, 2013), often made possible by the drafting of legislation. However, at the time of writing this thesis (2013-15) and in a context of changing policy objectives about higher education, there is no general legislation covering the regulation of academic standards and quality of higher education in England. There are certain elements of higher education that are enshrined in law, including the protection of the title 'University' and the terms, 'degree', 'masters' and 'doctorate' (Education Reform Act 1988). There are also various quasi-legal documents such as the Higher Education Funding Council for England's 'Memorandum of assurance and accountability'. However, the only legal basis for the regulation of academic standards and quality is through section 70 of the Further and Higher Education Act 1992, which gives the Funding Councils responsibility for ensuring assessment of the quality of teaching of the higher education they fund.

In many countries formal laws and regulations have been introduced mandating higher education providers to establish quality assurance systems internally, audited through processes of assessments and accreditations (Brennan and Shah, 2000; Gornitzka and Stensaker, 2014). However, the absence of a legislative framework complicates the regulatory landscape for English higher education. In England neither the higher education providers or the programmes they offer are state accredited. In the absence of a legislative framework, the following study considers how the consultative nature of the development of the UK Quality Code for Higher Education contributed to a basis for the regulation of English higher education that developed between 2010 and 2014. This study focuses only on the relationship of regulation to academic standards and quality – the teaching and learning in higher education rather than the regulation that is associated with university research or of wider finance issues. The study extends some of the arguments outlined in my

Institution Focused Study (IFS Bohrer 2011), which concluded the following using theories from Colebatch (1998).

> The Quality Assurance Agency for Higher Education's key role at the point of implementing policy was demonstrated as being through the responsibility for codifying 'endorsed statements from authority to give vision or action to goals'.

The development of the UK Quality Code for Higher Education demonstrates how this codification takes place and how, in turn, this contributed to a basis for regulation in English higher education at a particular point of higher education history. This thesis demonstrates, through analysis of the consultative process used in developing the UK Quality Code for Higher Education, how the consultative process contributed to a regulatory framework. The regulatory framework in English higher education, at the time, operated without legislative powers. This thesis argues this was possible because of the values underpinning the higher education sector.

In his paper comparing independent regulation of newspapers with universities, Behrens (2013) suggested that debates about regulatory arrangements tend to be of two types.

> 'One is that they are sector specific and exclude experience from other sectors (or countries). The alternative is that policy proposals are presented in giant baskets in which regulatory arrangements in one sector are proposed wholesale for those in another without due regard to institutional or cultural differences'.
> (Behrens, 2013 page 3)

Behrens continues by pointing out that both types are flawed. It can be difficult to make meaningful comparisons across different sectors. The university is one of the most enduring social institutions in Europe (Massen and Stensaker 2011). However, while they are important institutions for society they are also complex organisations. Austin and Jones state universities have

> 'a set of values, practices, and structures – governance included- that shape their actions and create identity' (Austin and Jones 2016 page 7).

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In this study, I argue it is the values of higher education that contribute and in the absence of legislation, to making a framework for regulation possible. Given this specific context, a comparison with other sectors is not necessarily useful. However, consideration in isolation of a wider context is unnecessarily limiting. Therefore, before considering the detail of the development of the UK Quality Code for Higher Education (see chapters three and four), it is useful to think about regulation from a slightly broader perspective, as it allows for the role of a code to be explored in more detail. This thesis therefore does not represent a comparative analysis of regulation across different sectors. However, it does explore in detail the development of one aspect of the regulatory arrangements developed for higher education in England between 2010 and 2014.

Regulation in context: an historical perspective

When considering what regulation is, Stanley (Resources for Civil Servants, web pages, 2013) lists possibilities for different types of regulation as laws that impose a burden (such as VAT), laws that confer rights or provide protection, the creation of licensing bodies and regulators, economic regulators, regulators of public sector activities and self-regulation.

The Department for Business Innovation and Skills' (BIS) paper from the Better Regulation Delivery Office (BIS, 2013) provides a different distinction of regulation from Stanley, dividing regulation between types of regulators that are economic regulators and those that are non-economic regulators. Broadly, both groups have similar remits and missions in common. In the BIS report, what binds the two groups and sets them apart from self-regulating sectors is that these regulators usually have a separate statutory basis setting out their status and remit. Sectors that are largely self-regulating were not included in the BIS report but with over fifty non-economic regulators listed; the report does provide some idea of the magnitude of the current complex system of regulation in the UK.

Where regulations are overseen by regulators, the regulators are tasked with working with the principles of good regulation as defined in the Legislative and Regulatory Reform Act 2006 (section 21) following the work of the Better Regulation Task Force (1997) and the subsequent Better Regulation Commission (2006). These principles are proportionality, accountability, consistency, transparency and the targeting of regulation where it is needed (Regulators' Compliance Code

replaced by the Regulators' Code in 2014, Better Regulation Delivery Office). Where regulation is not through statute, for example the higher education sector, these principles of regulation are still likely to be subscribed to.

The Higher Education Better Regulation Group (HEBRG) founded in 2009 was the successor to the Higher Education Regulatory Review Group (HERRG). HEBRG was tasked with focusing on improving the efficiency of the UK higher education sector's regulatory requirements. It is an independent group operating on behalf of all higher education providers. Using the principles of good regulation, HEBRG developed the following 'Principles for Better Regulation of Higher Education in the UK' (2011).

1. Regulation should encourage and support efficiency and effectiveness in institutional management and governance.

2. Regulation should have a clear purpose that is justified in a transparent manner.

3. Regulation depends on reliable, transparent data that is collected and made available to stakeholders efficiently and in a timely manner.

4. Regulation assessing quality and standards should be co-ordinated, transparent and proportionate.

5. Regulation should ensure that the interests of students and taxpayers are safeguarded and promoted as higher education operates in a more competitive environment.

6. Alternatives to regulation should be considered where appropriate.

Regulation can be summarised as being a way of ordering policy objectives, often through the statute of law, but not always, with compliance with the regulations being overseen by regulators. Regulation in higher education as King explains can aim to reduce elements of risk protecting students' interests and ensuring public funds are properly managed. This is achieved through generating accountability and transparency in decision making, opening such decision making to wider scrutiny and comment thereby maintaining the reputation of higher education both nationally and globally (King, 2013). Chapter two considers regulation of higher education in England in more detail. However, with regard to the research question, before looking at the detail of higher education, it is helpful to consider a more general

historical perspective on the development of regulation and, in particular, the role of a code.

Ian Byatt, the former Director General of OFWAT (the regulating agency for water providers in England and Wales), summarised in a speech (RPI conference papers, 2013) how the modern concept of the role of the regulator dates back to the early regulation of the nineteenth century. At that time, competition determined industry decisions. Following a series of bankruptcies, (for example some rail companies), resulting in investors losing money, various industries began to appoint overseers or 'regulators' to act as someone from whom recourse could be sought. The person appointed would usually come from within the regulated industry. Subsequently, this was associated with perceived problems of bias towards the industry, rather than with protecting investors in, or customers of, the industry. This paved the way for the development of more modern regulation.

Byatt (RPI conference papers, 2013) explained how, during the later nineteenth century, more time-limited private sector franchises began to be established (for example for transport, and electricity) and it became apparent that competition for trade was not always as 'free' as had been assumed. Industry leaders were often involved in the process of making price agreements and individual industry overseers did not have enough powers to prevent this price fixing. Further regulation was deemed necessary. This resulted in 'ex-ante' regulation providing limited regulation through Acts of Parliament that set out some obligation of service. What this shows of relevance to the research question is that from this point in time regulation started to be of interest to the state and to become embedded within the legal frameworks that characterise much of the regulation of today, although not currently higher education.

By the beginning of the twentieth century, state involvement in industry itself was much greater. By the mid-twentieth century, there was a move towards nationalisation of private companies. For example, private rail and coal industries became state owned, followed later in the century by the privatisation of these same industry sectors when they were deemed inefficient and uncompetitive (Byatt, RPI conference papers, 2013). Consideration of the history of regulation at this point is important for the research question because it demonstrates how government could use regulation to implement policy objectives.

In the early days of the privatisation of previously nationalised industries (the mid-1970s to the early 1980s), regulation became the key instrument used to implement the changes necessary. This is because privatisation of nationalised industries required some sort of contract between government and the newly privatised companies. This could be achieved through regulation. State involvement at this time included the appointment of independent regulators, which allowed for the separation and protection of the regulation of newly privatised industries from the uncertainties of changing government policy.

However, independent regulators were also liable to suffer from, or be perceived to suffer from, what was labelled 'regulatory capture'. This concept dates back to George Stigler's 1971 work 'The Theory of Economic Regulation' and concerns that each industry designed and generated the required regulation for its own benefit. By influencing regulation for its own benefit, a sector could be said to have captured the regulator for its own interest, with the market being influenced in a way that best served the industry. In reality, the role of independent regulator was a difficult one – to possess the specialist knowledge needed to make sensible decisions, regulators would often need to come from the industry they were regulating. This left them open to accusations of bias towards that industry when decisions were unpopular with customers. They could make, or could be thought to have made, decisions in the interests of the sector they were regulating, rather than in the interests of the wider society they were meant to be protecting.

Because of a growing disquiet about having a single regulator, there was an increase in the number of new organisations called 'regulatory agencies' established. Regulatory agencies were organisations employing a number of people who were supposedly able to accumulate the skills needed from the industry sector without having to rely solely on the judgement of one person. The creation of national independent regulatory agencies was considered a way of increasing assurance. This is because agencies had the opportunity to bring together 'experts' able to offer 'objective' solutions to regulatory problems (Hertog, discussion paper 2010), while still understanding the public perspective. This rise in the number of regulatory agencies was one impact of New Public Management (Hood 2001) popular from the 1980s and a way of promoting efficiency in order to modernise. At this time, the concept of a service user as a customer became popular for many public services, including education. However, with the increasing complexity of public services, concepts of value largely replaced the New Public Management agenda and the objectivity of

regulatory agencies was challenged. For example, Kay (RPI conference papers, 2013) suggested few members of the public actually make contact with regulatory agencies, limiting the knowledge and understanding of issues seen from the wider public perspective. Through the 2000s, increasing doubts emerged about the independence of regulating agencies and about how regulators could enforce their decisions.

Estanche (RPI conference papers, 2013) outlines his typologies of the weaknesses of independent regulatory agencies as follows.

- Limited capacity or skills to regulate.

- Limited accountability, although he considered that consultation processes could help negate this.

- Limited ability to commit (policy cycles affecting more than they should if truly independent).

- Limited enforcement capacity, not enough resources, not enough tools for monitoring and assessing may be subject to political interference.

What could potentially be considered important for establishing regulation was having a legislative basis. For example, Swift (RPI conference papers, 2013) spoke of regulators 'as creatures of statutes, promoting the objectives set by Parliament'. Importantly, Swift saw regulators deriving legitimacy through law, with legislation providing a set of rules within which a regulator could work. Promoting the objectives of governments through the formation of policy is an important consideration in the way regulation has developed within the higher education sector because it has not always required legislation. What was important was that the use of public consultation was considered an integral part of the policymaking process. For example, on the website for the Northern Ireland Government, the government say that public consultations allow for input from the public about matters affecting them. This is considered to improve efficiency and transparency when drafting policy or legislation (ni-direct government services, 2014).

The idea is that policies are more effective if policymakers listen to those the policies will affect and consider their views. The consultation process is important as it allows policymakers to use the widest possible range of information sources and to include in discussions any concerns or issues that have not been picked up from existing evidence or research. As a process, consultation can also help to monitor

whether change is really needed (ni-direct government services, 2014). The UK Quality Code for Higher Education was developed through such a consultation process.

Principles for Consultations by UK government departments and other public bodies were set out as part of the Civil Service Reforms (2012, updated 2013) in an effort to demonstrate that policymaking can be a more open process. These principles suggest that policy-change experts can collect a wider range of views through discussion and working with those who will be affected. This, in turn, helps policymakers to understand any unintended consequences of their policy and helps them to understand any practical issues there might be with the implementation of the policy.

The Organisation for Economic Co-operation and Development (OECD) suggests consultation may help improve the quality of regulation, because discussion can give different perspectives to policymakers' expertise and ideas for potential alternative actions might be proposed. The OECD also suggests consultation can help in balancing opposing interests, in identifying unintended consequences and identifying potential necessary interactions between regulations from different parts of a government. Importantly for this study, the OECD suggests that consultation enhances voluntary compliance and legitimacy through shared ownership and, therefore, increases the motivation to comply (OECD 36785341.pdf).

The UK Quality Code for Higher Education sets out a series of 'mandatory' expectations for higher education providers to meet. I argue in this thesis that the expectations in the Quality Code gained their 'mandatory' status through the shared ownership created by the way the UK Quality Code for Higher Education was developed. While this 'mandatory' status was not legislated for, the way the expectations were developed allowed the so-called 'mandatory' status to be accepted. This 'mandatory' status is different from previous reference points that had been developed, largely because evidence collected prior to the development of the UK Quality Code for Higher Education demonstrated a need for clarification of the status of guidance produced for higher education providers. This created a 'must do' without law. The diversity of respondents to the consultations and the active promotion of the consultation process, encouraging responses from those who do not usually respond to consultations, meant when deciding on the final expectations there was a range of input to use. This meant opposing views were

taken into consideration without serving the interests of any one group of providers over another.

The work of the Open Government Network (2012) suggests the effectiveness of a public consultation process is determined by the quality of the planning that precedes the consultation; in particular, planning how to reach relevant participants and how to handle the subsequent results by including them within the wider decision-making process. For public consultations to be effective, they need to include the views of those that will be affected. They need to make their purpose clear and the time scale achievable, providing transparency over the method of responding to the submission. The work in developing the UK Quality Code for Higher Education, as outlined in chapters three and four, demonstrates how the process used adhered to these principles.

Regulation in context: regulatory styles

Depending on what is being regulated, different regulatory styles have emerged. Services funded mostly by the state, such as health and compulsory education, have particular statutory requirements. For example, The Office for Standards in Education, Children's Services and Skills (Ofsted) has its statutory basis set out in the Education Act of 2006 (amended in 2012) and uses a framework for inspection to make judgements on the different areas for which it has responsibility (Ofsted web pages, 2015).

Another example of a statutory basis for regulation is the General Medical Council (GMC), which is the independent regulator for doctors in the UK. It works under the by-line of 'regulating doctors, ensuring good medical practice'. Its current functions and powers were prescribed in the Medical Act of 1983. The GMC works with other regulators of healthcare and social care and investigates complaints about doctors. The GMC is itself regulated by the Professional Standards Authority for Health and Social Care, which reports to Parliament through the Privy Council (GMC web pages, 2015).

Common to these types of regulators are their statutory powers regarding the sanctions they can impose following inspections and investigations.

However, other organisations that perform a regulating function do not have statutory powers. These tend to be in sectors that do not receive any public money. For example, the motor industry has a 'Motor Code' that helps provide reassurance about the automotive industry. The industry sector developed three codes: The New Car Code, the Service and Repair Code and the Vehicle Warranty Code. Together these form a Code of Practice, which received approval in 2004 from the Office of Fair Trading, which investigates complaints against the terms stated in the code. This effectively provides arms-length government-approved protection for car buyers without creating any specific legislation (Motor Codes web pages, 2015).

The National Codes for Assured Accommodation are another example of regulation that provides consumer protection without specific legislation. The associated literature states how it has embedded national standards for rented accommodation and principles for good practice about the renting of accommodation to students in a code. Any letting companies that sign up to the code are verified and periodically checked for compliance by the National Codes for Assured Accommodation. Although it is a voluntary scheme, its website suggests that compliance with the code provides a good business rationale for companies, because, by subscribing to and following the code, organisations are able to badge themselves as fair landlords. It suggests the code provides a framework that can be helpful to companies in minimising the time they spend on complaints. The National Codes for Assured Accommodation says this is because the framework can provide a codification of what is reasonable (National Codes for Assured Accommodation web pages, 2015).

These examples are important to the research question, as they help place higher education in a wider context. Higher education falls somewhere between the first two examples and the second two, as higher education is not a statutory service but it does receive large amounts of public money. However, despite the contribution to higher education from public finances, it has not traditionally been a highly regulated sector. Unlike most other countries, while the state officially recognises universities in England, it does not own or accredit them. Higher education providers are largely autonomous organisations. Once granted degree-awarding powers, they can award their own qualifications. Promoted as fostering a diverse higher education sector, this autonomy has been considered to provide the basis of the success and international reputation of UK higher education. However, regulation of such an autonomous system can be complex and the recent more marketised approach to

higher education (see chapter two) has led some to question the basis of the previous largely implicit system for regulation. This makes the completion of this thesis timely.

As already stated above, those regulating need to have some independence from the sector being regulated so as not to be unduly influenced by the sector but they also need to have access to expertise about the sector so that the regulation can be meaningful. If the regulator/regulatory agency became too dependent on the sector, there would be a chance of regulatory capture occurring, with the regulator making decisions that benefit the interests of the sector to the detriment of the wider context. However, if the regulator does not work with the sector, it can find it is in regulatory isolation and the regulation can become meaningless. Therefore, a balance has to be found. For sectors that have less dependence on public money and few statutory requirements, such as higher education, it is more likely the sector will develop a regulatory system that can be considered a partnership between co-regulation and self-regulation: as is the case for higher education.

It is important to consider the general nature of self-/co-regulatory systems in more detail given their importance to the way regulation for the higher education sector has evolved (see chapter two). For example, if the relevant sector helps with designing (and paying) for the 'rules' to be written, this demonstrates self-regulation, but if those 'rules' are checked and enforced through an independent organisation, it demonstrates co-regulation. As an example of co regulation, the Advertising Standards Authority is an independent regulator that applies communication codes to advertisers and acts on complaints using the 'rules' written in the code developed with its sector (Advertising Standards Authority web pages, 2015).

Importantly, in a system based on self- and co-regulation, it is sector experts with an understanding of the risks to their industry who provide the parameters for regulation. However, the development of independent regulatory bodies provides a means of using, or monitoring, regulation that, while removed from state intervention, provides more than self-regulation. This system of co-regulation essentially develops the process of regulation, allowing the combination of expertise resulting from self-regulation of an industry with oversight and/or ratification by independent bodies.

In self- and co-regulated systems, the concept of independence is important. Independence means being free from interference in decision making but not independent from engaging with others who have a better understanding of the particular sector's risks. The process of consultation is a mechanism through which to achieve this balance between self- and co-regulation. However, for such a self- and co-regulatory system to work, the members of the specific industry or sector have to be confident about the way their engagement with defining the 'rules' is undertaken or they are not likely to engage with the ratification processes. Without engagement, the system becomes weaker, as the enforcement options open to independent bodies are limited given there will probably not be any legal backup defining sanctions. In self- and co-regulatory systems, non-compliance with the 'rules' usually means the loss of reputation for the offending individual or organisation and can, in some cases, be associated with fines. Closures and withdrawal of funding are usually options open only to sectors with heavily statutory regulated systems such as schools or health services. However, reputation can be an important concept, especially within the higher education environment, making universities particularly susceptible to particular social pressures when maintaining their reputation (Watson, 2007).

The relevance to this study of these examples is that, while not all these organisations have formal statutory functions, they all have some form of 'rule book', 'guidelines' or 'principles', which essentially provide the same function; that is, they provide a framework for monitoring and/or for dealing with complaints. Compliance with these 'rules' can happen through a range of enforcement methods (self-verification through to inspections and audits). However, while the purpose of industry codes can vary, they all provide possible links to legislation. While they are not usually the law, they do form an essential part of how a sector is regulated. For those sectors without defining legal sanctions, such as higher education, reputation often provides an important aspect of dictating compliance. This thesis argues that this is of particular relevance when combined with a consultative approach in defining the 'rules', especially for gaining acceptance of those 'rules' if they are subsequently monitored for compliance. In this study, it is how a code is used when it is not linked to statutory powers that is important. Consequently, I explore below the term 'code' a little more deeply.

Regulation in context: the role of a code

A simple web search for code tends to draw on its use as a verb and, in particular, the use of the term by computing technologies. In computing science, a code can often be considered an algorithm (where symbols from a source are encoded through strings of letters or numbers) and allows large data files to be transmitted or stored. For example, HTML is a computing language and provides the rules for converting pieces of information into another form – 'encoding' or the reverse process 'decoding'. This process has allowed the transfer of information to happen where spoken or written language is difficult and pre-dates the computing era. For example, coding includes the use of semaphore or, indeed, the traffic light system, where green means go and red means stop codifying the 'rules' used in any given situation.

Used as a noun, code can be defined as offering a framework that demonstrates an explanation of cultural norms and values or 'cultural logic'. What codes can do is offer a way of translating between different discourses but this can make them tools of bureaucracy (Feenberg 2005, LaTour 2009 and Berry & Pawlik 2005). A code providing a quasi-legal status or 'rule book' provides a way for an industry sector to get its members to comply with sector norms and reassures the public by endorsing the good practice of those businesses or organisations that sign up to the code. If compliance with good practice does not follow, the code can also provide a framework under which complaints can be considered. The potential then is for a code to have quite a powerful position even without a statutory basis.

What this study goes on to develop is the argument that what gives a code a particular power is <u>how</u> it is developed. I argue that the UK Code for Higher Education has a mandate because it was developed through consultation with the higher education sector rather than being imposed. Of course, not everyone in a sector is likely to feel well disposed towards a code. Even if established from within its own environment, a code can potentially be perceived as placing restrictions on practice, which could, for example, be considered to harm market competitiveness. However, practice endorsed by experts is likely to carry authority, creating an environment for self- and co-regulation. This study uses the development of the UK Quality Code for Higher Education to demonstrate that it is possible to embed authority in a code, showing the relationship between guidance and a regulatory framework. The study demonstrates that, because of the nature of the regulation of

academic standards and quality of higher education in England, the usefulness and relevance of the UK Quality Code for Higher Education depends on the way the code was developed.

This study draws on my perspective due to my role in the process of developing the UK Quality Code for Higher Education and as an employee of the Quality Assurance Agency for Higher Education. My involvement with the UK Quality Code for Higher Education includes developing the original concept for the code. This followed the evaluation of the Academic Infrastructure, a research project that I undertook between 2009 and 2011. I also had particular responsibility for the development of several specific chapters of the UK Quality Code for Higher Education, including both new topics and revisions to guidance previously produced but in need of updating.

My contribution to original (professional) knowledge through this study comes from my professional practice in developing the UK Quality Code for Higher Education. The study contributes to knowledge by discussing a small piece of the puzzle of how higher education is, and can continue to be, regulated through a system of self- and co-regulation. It also looks at the contribution the development of a code has made to that system. Through the UK Quality Code for Higher Education, 'mandatory' expectations about UK higher education were developed, which were subsequently monitored through a peer review process rather than through a legislative framework.

This study explores how the UK Quality Code for Higher Education was developed and why the nature of that process should contribute to future debates on the development of the regulation of higher education in England. The originality of this contribution comes from using data collected through public consultation and providing an analysis that has not previously been completed. In chapter two, consideration is given to the boundaries that limit this study to a particular period of higher education history (2010-14). This is a period following reforms introduced to higher education following the publication of the Independent Committee on Student Fees and Funding (2010) and The White Paper 'Higher Education: Students at the heart of the system' (BIS, 2011). The study concludes prior to any further reforms implemented following the recommendations published by the Competition and Markets Authority (2015) or as a consequence of the Review of Quality Assessment in England, Wales and Northern Ireland taking place in 2015. While this original

contribution to professional knowledge may be small, it is set in a time of flux and a critical period in the history of English higher education and is, therefore, an important addition to the body of knowledge about higher education.

By considering regulation in a broader sense, the first chapter of this thesis has provided the context for further study. The following chapter outlines more specifically how English higher education is regulated, especially following changes to funding and the regulatory framework developed after the publication of the White Paper (2011). Through introducing the UK Quality Code for Higher Education, the second chapter provides a platform for the subsequent chapters of the thesis. These chapters consider the evidence that the consultative nature of the development of the UK Quality Code for Higher Education contributes to the regulation of English higher education in the absence of a legislative framework. The nature of the way in which the Code was developed is shown to be important, balancing the tensions of a system of diverse organisations that were prepared to be regulated with a single reference point that has not been established through law.

Chapters three and four outline the methods used in the study and the evidence collated and in chapter five I analyse the evidence. I use theories of social capital to explain the regulation of higher education in England without a legislative framework and allow conclusions to be made about why the regulated (i.e. higher education providers) can play such a critical part in producing criteria subsequently used successfully for their own regulation. The study concludes with its limitations and consideration for further areas of study.

Chapter two: Context

The following chapter describes how regulation of academic quality and standards in English higher education has developed and considers the implications of the absence of a legislative framework for that regulation. By outlining the characteristics of English higher education, this chapter introduces the UK Quality Code for Higher Education. The chapter goes on to consider the place the Code has in the external review of higher education. The chapter also establishes the contribution of the Code as part of the regulatory framework of English higher education, creating a context for subsequent chapters to demonstrate how the consultative nature of the development of that code contributed to regulation of English higher education.

The policy context in which regulation in English higher education developed

For the purposes of this study, the significant beginning to the political context was October 2010, when the Independent Committee on Student Fees and Funding published its report 'Securing a sustainable future for higher education: an independent review of higher education funding & student finance' (the Browne Report). The core to the Browne Report suggested lifting the limit or 'cap' on student fees completely. The proposal was rejected by the government at the time but paved the way for a new White Paper 'Higher Education: Students at the heart of the system' published in June 2011. The publishing of the Browne Report/White Paper represents a particular point. As Callender and Scott explain (2013), this was only one stage in a policy process based on a series of changes represented by the policy shifts that had taken place since new Labour came to power in 1997 and following the publication of Higher Education in the Learning Society or the Dearing Report (NCIHE, 1997).

The Dearing Report provides important context because it signalled a period in which sector-wide arrangements for quality assurance and greater accountability especially on standards began (Watson, 2007). However, for this study, it is the publication of the Browne Report/White Paper that provides a point in time that locates the most recent reforms of English higher education. These reforms were summarised, for example, by the Competition and Markets Authority (CMA, 2015) as including the liberalising of the student number controls; the introduction of

measures aimed at improving access to, and the quality of, information about courses and the wider learning experience; changes to the funding regime; and promoting the diversity of types of higher education providers.

Prior to the Browne Report/White Paper regulatory conditions in England were placed on universities by the financial memorandum and Grant Letters provided to them by the Higher Education Funding Council for England (HEFCE). The power to do this came though the Further and Higher Education Act of 1992; section 68-70, which gave HEFCE a statutory responsibility for assessing the quality of the higher education it funded. Traditionally, regulatory requirements formed part of the conditions set out by HEFCE though their annual Grant Letters and financial memorandum sent to institutions in receipt of the public money HEFCE distributed. Conditions included subscribing to, and being reviewed by, the Quality Assurance Agency for Higher Education. This meant there was a difference between the regulatory regime for the publicly funded institutions and any alternative (or private) providers, which did not receive the recurrent grant and, subsequently, the regulatory requirements outlined in that annual Grant Letter. Regulation evolved largely around expenditure and protection of public money (CMA, 2015).

The HEFCE distributed public money to certain universities and colleges in England, ensuring that the money was, as it reported, 'used to the greatest benefits to students and the wider public' via the system known as the 'block grant' (HEFCE September 2010/24). The 'block grant' covered the money provided for teaching, research and related activities calculated to one overall amount through a particular formula developed by HEFCE. Universities were largely free to spend the grant according to their own priorities but, as stated above, with some criteria outlined by the annual HEFCE Grant Letters. At the time, the HEFCE 'block grant' was the largest single source of funding for English higher education. However, the 'block grant' contributed only a part of the overall spend by universities and colleges. Universities and colleges also had to raise money from other sources. The other main source of funding for higher education was usually tuition fees (HEFCE Sept-2010/24).

Tuition fees for most home/EU undergraduate full-time students were restricted by limits on how much could be charged (Higher Education Act 2004). Fees for most postgraduate courses and for part-time and international students were not restricted. Following the Browne Report, the proposal to lift the cap for all student

fees was rejected by the government but the subsequent White Paper, published in June 2011, signalled major changes to the way the higher education system in England would be funded in the future. The White Paper also signalled there would be an increase in the limit on the amount that could be charged for the undergraduate student fee and the 'block grant' would be reduced.

While students would not have to pay their fees upfront under the new scheme, importantly they would become directly responsible for borrowing and later repaying the money needed for the higher fee. The money borrowed for fees is paid directly to higher education providers via the Student Loans Company and not via the HEFCE. Students being directly responsible for their fees introduced a more consumer-type transaction for their higher education provision and this had the potential to establish a much more marketised approach to higher education. The White Paper also encouraged more types of providers of higher education to enter 'the market', with prospective students of these new providers often also having access to the Student Loans Company. This potentially widened the choice of where students could receive an education. With the reduction in the 'block grant', the Grant Letter was no longer able to provide the basis for regulation for higher education provision in the same way. However, the White Paper still expected the HEFCE to play a lead role in the regulation of higher education in England.

Following the publication of the White Paper, the Minister for Universities and Science (David Willetts MP) and Secretary of State for Business, Innovation and Skills (Vince Cable MP) wrote a letter to the Chair of the HEFCE Board on 28 June 2011, outlining the new requirements for the HEFCE. The letter published on the HEFCE website includes paragraphs 20 to 26 giving more detail about the new Regulatory Framework that the White Paper proposed should be established. The letter summarised the policy objectives created through the White Paper as being about an 'affordable higher education system, with more competition and innovation and a level playing field for new providers' (letter from BIS to Tim Melville-Ross CBE, Chairman, Higher Education Funding Council for England 2011). The letter made it clear the Regulatory Framework that was proposed for English higher education included not only universities but also further education colleges and other 'alternative' providers. This new Regulatory Framework was to be overseen by HEFCE and, following a further technical consultation, the powers and sanctions required by HEFCE to perform the role of lead independent regulator would be provided through legislative powers (Paragraph 22 of the letter).

The main point from the White Paper of relevance to this study is that more public funding for teaching was to be routed through the Student Loans Company, with less through the HEFCE 'block grant' system. The HEFCE was asked to take a greater role in the regulation of higher education to protect the interests of students. However, this arrangement started to separate the regulation responsibilities from the body that provided the funding. This changed the balance of the basis of the regulation in English higher education that had evolved around the expenditure and protection of public money (CMA, 2015) through the Grant Letters that formed the previously implicit model of regulation.

 The HEFCE lost some power for imposing regulatory conditions because of the weakened value of the Grant Letter, with much of the money previously allocated through the teaching Grant being allocated by the Student Loans Company. In addition, the potential after the publication of the White Paper was for higher education to become even more diverse and the HEFCE did not have the statutory responsibility to assess the quality of the higher education it did not fund, which meant the regulatory system that had been in place was no longer adequate.

The publication of the White Paper gave the HEFCE the role of lead independent regulator for higher education in England. The HEFCE was expected to work with other organisations that also had a role in aspects of regulation. For example, the Office of the Independent Adjudicator (which considered individuals' complaints) and the Quality Assurance Agency for Higher Education (which reviewed higher education and made judgements on its academic standards and quality). It was assumed that the regulation of higher education would comprise a number of different sources but it was widely expected by higher education providers that a subsequent Higher Education Bill, following the publication of the White Paper, would provide the statutory basis for this arrangement.

In response to the White Paper and the expected resultant higher education legislation, interest intensified in how the regulation of higher education should be organised. Several reports emerged, proposing different ways to take forward the regulation of higher education, including 'A Critical path securing the future of higher education in England' (2013) from the Institute for Public Policy Research, 'Protecting students, encouraging innovation, enhancing excellence; regulating higher education' (2013) published by the Higher Education Commission and 'The future regulation of higher education in England' (2013) from the Higher Education

Policy Institute. These reports put forward various suggestions for how to regulate higher education through the creation of new organisations, mostly from the merger of existing ones, and suggesting new powers that could be created through a new Higher Education Bill.

However, what is important for this research is that the government did not put forward any such bill. At the time of writing, it appears the White Paper continues to be a 'work in progress' (Scott, 2013) or 'unfinished business' (Hillman, 2014). The reason for the reluctance to table a new Higher Education Bill was most likely because of the wider political landscape at the time. There was an uneasy acceptance of the raising of student fees and it seems possible that there was a fear that debating any further Higher Education legislation could cause unnecessary divisions within the Coalition Government of the time (Watson, 2013). With the additional likelihood of receiving external opposition to any further debate that included any link to issues about student fees, the tabling of a new Higher Education Bill was postponed at least until after the General Election in May 2015. This meant there was no legislative basis for the regulation of academic standards and quality of higher education in England. Following the publication of the White Paper (2011), the HEBRG was asked to review the wider regulatory landscape not specific to higher education but that could have an impact on higher education institutions. The review considered corporation tax returns, equality and diversity, employment law, Freedom of Information legislation, health and safety, estates and infrastructure and procurement (HEBRG, 2011).

Sir Tim Wilson, Chair of HEBRG 2012-14, suggested that the absence of a Higher Education Act for England following the White Paper (2011) left a void in the structure of regulation that he considered was filled by BIS, the HEFCE and other agencies having to act within their limited powers (HEBRG, 2014). As a result, The Regulatory Partnership Group (RPG) was established in September 2011 by the HEFCE and the Student Loans Company, with a remit to advise government, the HEFCE and national agencies on policy, strategic and operational issues arising from the development of the funding and regulatory arrangements for higher education in England. The RPG published an Operating Framework in July 2013. This Operating Framework was established to explain how higher education providers in England were held to account and regulated. It described the different aspects of regulation and the oversight of higher education provided by different organisations. The description of the Operating Framework states that the

framework was informed by the HEBRG Principles (see chapter one). It also references the HEBRG report on the impact of non-higher education specific regulation on higher education institutions (2011).

Through its remit to develop the regulation of higher education in England, the RPG effectively created the environment for the implementation of the policy objectives documented in the White Paper. The RPG's view reflecting the complicated sector that made up higher education in England was that simplification of regulation could create a threat to diversity. The RPG therefore suggested a Regulatory Framework that needed to be designed in a context where higher education providers had to be accountable to a multitude of stakeholders while still being able to continue meeting the demands of their own traditional contexts and missions. The challenge in developing the Regulatory Framework it suggested was not to curtail the diversity of higher education through standardisation.

The RPG reviewed the regulatory arrangements for English higher education and in July 2013 published an Operating Framework that endorsed the principles of institutional and academic autonomy.   A diagrammatic form of this framework is reproduced in Appendix one. The framework encapsulates academic quality and standards as one of a number of building blocks making up regulation. In answering the research question, this study identified that the academic quality and standards building block could be used in demonstrating how the nature of the development of the UK Quality Code for Higher Education became part of the regulation of English higher education. In practice, what this building block consists of depends on universities own internal quality assurance mechanisms. However, what the UK Quality Code for Higher Education was able to provide was a framework that higher education providers could use to align their own internal quality assurance processes with national expectations of academic standards and quality. How the UK Quality Code for Higher Education was developed shows in part how the newer regulatory regime became embedded within higher education post the publication of the Browne Report/White Paper without specific legislation having been introduced. The point is that, given the nature and values of the higher education sector, even in the absence of legislation, the UK Quality Code for Higher Education offered an effective way to embed the policy objectives from the White Paper.

The next section considers how the nature and values of higher education are providing the context for why the UK Quality Code for Higher Education was

developed in the way it was and why (see chapter five) it was possible to embed the policy objectives from the White Paper without the expected changes in legislation.

The characteristics of UK higher education

The nature of how the UK Quality Code for Higher Education was developed will be shown to be important in balancing the tensions of a system of higher education made up of a diverse landscape. As Watson suggests (2007), modern societies have strong, but often contradictory, interests in both the purposes and performances of universities. Watson goes on to outline a helpful typology of the purpose of universities, citing the liberal theory of self-realisation and social transformation; the professional formation of providing expertise and vocational identities and their role as a research engine allied to economic growth (Watson, 2007).

Universities are therefore complex organisations that support a diversity of activities and have established different levels of power and authority. Austin and Jones suggest that the word 'university' is more than simply a name: it implies an identity that is dependent on inherent values (2016). Jarvis suggests that historically higher education in 'search of truth' do so

> 'through the application of reason, objective method and discovery of knowledge – a process built upon peer review, rigorous impartial assessment, critique and a perennial preoccupation with interrogating ideas and epistemologies of knowledge' (Jarvis 2014 page 155).

As Jarvis (2014) explains evaluation and the assurance of academic quality can also be considered to be intrinsic to higher education. Jarvis suggests nearly half the countries in the world have a quality assurance system or quality assurance regulatory body for higher education. It is external quality assurance that Gornitzka and Stensaker have suggested allows for regulatory regimes for higher education to become conceptualised as 'the norm, the mechanism of decision making' (2014). Gornitzka and Stensaker suggest regulatory regimes provide institutions with a mechanism through which investigation of their own environment means they can display discretion in the interpretation of the actual arrangements dictated by those regulatory regimes. Gornitzka and Stensaker suggest that it is through challenge of the importance of national level quality assurance regimes that a complicated multi-

level regulatory order within Europe has arisen. They suggest that the dynamics of that multi-level regulatory order have been shaped by the characteristics of higher education norms including self-governance. Gornitzka and Stensaker go on to suggest because of the ambiguities of the regulation of quality in higher education that new regulatory rules can be introduced alongside existing rules and that this creates uncertainties in how to enforce and interpret quality assurance in higher education.

Within this complicated landscape the higher education sector comprises not only universities but also a range of other providers. The use of the term 'higher education provider' by policy makers rather than 'universities and colleges' reflects the diversity of higher education provision. The term is used because it includes the many forms of higher education provision available, including 'alternative' or 'private' providers (providers that can be 'for profit' or 'not for profit' organisations), as well as the publicly funded institutions such as universities. The policy initiatives following publication of the White Paper opened up who could apply for degree-awarding powers (different types of powers) as well as who could apply for the university title, encouraging expansion of the existing diversity (see below) by promoting growth in further alternative provision. The alternative provision that contributes to the higher education system is itself diverse, often specialised and made up of a large number of very small providers, many forming successful partnerships with universities (BIS, 2013). However, the majority of higher education students still study at a relatively small number of publicly funded higher education institutions compared with a much smaller number of students studying at the much larger number of alternative providers.

There are an estimated over 600 alternative providers (BIS, 2013) compared with 162 publicly funded higher education institutions across the UK (130 in England). This is important to this study because the basis of the existing regulation evolved from the expenditure and protection of public money (CMA, 2015). However, it was debatable whether even with alternative providers' access to public money given the changes to the funding regime explained above if that existing regulation was sufficient to include all higher education provision. Combined with changes in the role of the HEFCE's regulatory function, there was a place for a code that applied to all higher education, whoever the provider.

As part of the landscape covered by the Regulatory Framework, it helps to consider the characteristics of that diverse higher education sector that is included in the remit

of the code. There is much information about publicly funded higher education because information is collected by the Higher Education Statistics Agency (HESA) and its data helps provide a view of the higher education landscape. The HESA data tables for 2011-12, show that there are approximately 2.5 million students studying in UK higher education institutions, of which around 2 million are registered in England. Around 100,000 of the students in higher education are studying at further education colleges. Over 350,000 staff (not including short-term contracts) work at higher education institutions, with approximately 48% of these academic staff and 52% non-academic staff. About 1.7 million students study full time and 700,000 study part time. Undergraduate students account for approximately 1.9 million students, with 500,000 postgraduate taught students and a further approximately 100,000 postgraduate research students (UUK facts and figures – summer 2013).

Much less is known about the alternative providers. A report provided to BIS (2013) estimated that there are likely to be over 600 alternative providers of higher education in the UK, with an estimated 160,000 students (2011-12). According to the survey for the BIS report, most of these providers were reported to be relatively small, with fewer than 100 higher education students registered at each, although a few providers were much bigger, with over 5,000 registered students. About a third of these alternative providers were non-specialist and about a third specialised in business, management, accountancy and IT, while the final third specialised in other areas such as religion, the arts or science and technology. Of the for-profit organisations, many had been established more recently than the publicly funded higher education institutions. However, not all alternative providers are for-profit organisations and some had been in existence for many years.

In 2010, Fielden, Middlehurst and Woodfield reported an increasing blurring of the boundaries between the publicly funded universities and alternative providers, as grant-funded universities had increasingly developed their privately funded offerings and the privately funded providers were increasingly using partnerships with universities to link them to public provision. Consequently, higher education was becoming an increasingly complex sector. Such diversity of provision is often seen as a strength for UK higher education, providing a variety of ways for students around the world to learn, to achieve their potential and to gain qualifications. However, such diversity can make it difficult to generalise, which in turn makes it difficult to regulate. It is within this landscape that the UK Quality Code for Higher Education was developed.

Typically, universities have fairly flat management hierarchies that can encourage knowledge to flow freely. The terms community and collegiality have often been associated with higher education (Cunningham 2015; Watson 2007).

Austin and Jones suggest that

> 'Countries with cultural-orientated belief systems generally offer a greater degree of freedom to universities than utilitarian and service-orientated belief systems. The cultural-orientated belief system is typical of what is found in the United Kingdom, where the collegium model guarantees significant freedom to act in several areas'.
> (Austin and Jones 2016 page 14)

The Chief Executive of the Higher Education Academy Craig Mahoney said in the foreword to the publication Dimensions of Quality, 'higher education is a transformative process supporting the development of graduates who can make a meaningful contribution to the wider society, local communities and to the economy' (Gibbs, 2010). It has been shown above how UK higher education is diverse with different types of institutions catering for different types of learners but, according to Watson (2007) there is a consistent theme to the value and identities in higher education that contains a tradition of civic and community engagement. Watson goes on to say that 'at the heart of academic citizenship is the concept of membership' (page 139). This is an important idea in understanding why the way the UK Quality Code for Higher Education was developed was so important to its success in becoming part of the basis for regulation in England.

While recognising that higher education is set within social and economic contexts, Becher and Kogan (1992) set out to explain in their work how higher education is a system that can 'best be understood and explained, in terms of internal logic as much as of any extrinsic rationale'. The values and principles that underpin higher education make it arguably a sector that encourages high involvement and social responsibility from its members to the sector and that is, therefore, well equipped to support the environment of the self-/co-regulation that has emerged. Higher education as a sector tends to exhibit high levels of 'social capital', a concept that focuses on social networks and relationships based on shared norms, trust and values (Watson, 2007, Putnam, 1993).

Becher and Kogan (1992) suggest at any one time there can be various tensions between government's central accountability pressures and academic values. However, in the UK, higher education is not owned by the state. While many higher education institutions receive public money through recurrent grants making them publicly funded universities, private universities do not receive the recurrent grant funding, so are not considered publicly funded per se but can award degrees and have university title. Many of the alternative higher education providers contribute to higher education by delivering higher education that is awarded usually through the publicly funded universities but are not themselves publicly funded through the recurrent grant. However, the changes to the funding regime that resulted from the White Paper (2011) meant students from alternative providers had access to the Student Loans Company. Once different types of providers had access to public money that was not provided by the HEFCE the implicit basis of the existing regulation was weakened.

At the same time as the publication of the White Paper, the Quality Assurance Agency for Higher Education developed the UK Quality Code for Higher Education (2011-13). This code was the primary reference point for the QAA Higher Education Reviews (HER) from 2013. The research question explored in this thesis argues that it is the way the UK Quality Code for Higher Education was developed that helped to contribute to its use as part of the basis of the regulation that developed as a result of the publication of the White Paper (see chapter three and four). However, in order to do this, it is necessary to consider what the UK Quality Code for Higher Education is in more detail.

The UK Quality Code for Higher Education

The UK Quality Code for Higher Education (the Quality Code) was developed by the Quality Assurance Agency for Higher Education (QAA) following the publication of the Evaluation of the Academic Infrastructure (QAA, 2009), the Consultation to the Changes to the Academic Infrastructure (QAA, 2010) and The Changes to the Academic Infrastructure final report (QAA, 2011). The Academic Infrastructure, developed after the publication of the Dearing Report (NCIHE, 1997) was a set of UK-wide, nationally agreed reference points that gave higher education providers a shared framework for setting, describing and assuring the quality of the learning

experience and standards of higher education awards. The Academic Infrastructure provided initial content for the Quality Code. The evaluation of the Academic Infrastructure was influenced by earlier policy objectives that I explored in depth in my Institutional Focused Study completed as part of my EdD programme (IFS, Bohrer 2011).

The Quality Code was developed between September 2011 and October 2013. The development of the Quality Code can be considered within the context of delivering policy objectives in a similar way to that of creating the Academic Infrastructure following the publication of the Dearing Report. The structure of the Quality Code reflected the findings of the evaluation of the Academic Infrastructure (QAA 2009-11) which was to produce a clearer distinction between aspects of guidance that related to academic standards and those that related to assuring and enhancing quality. The Quality Code uses the terms academic standards and academic quality and defines them as follows.

> *Academic standards* are the standards that individual degree-awarding bodies set and maintain for the award of their academic credit or qualifications. These may exceed the threshold academic standards. Academic standards include the standards of performance that a student needs to demonstrate to gain a particular classification of a qualification. *Threshold academic standards* are the minimum acceptable level of achievement that a student has to demonstrate to be eligible for the qualification. For equivalent qualifications, the threshold level of achievement is agreed across the UK.

> *Academic quality* refers to how well the higher education provider supports students to enable them to achieve their award. Academic quality covers learning, teaching and assessment and all the different resources and processes a provider puts in place to help a student progress and fulfil their potential (QAA 584-Jan14).

Gibbs (2011) outlines how quality can be a contentious term within higher education, a relative term rather than a threshold to be reached, although he agrees it is useful to distinguish between quality and standards but argues there are not agreed definitions of what quality is. However, for the purposes of this study, the definitions of how the QAA considers academic standards and quality have been

used and are helpful in understanding the stated purposes of the Quality Code. The purposes of the Quality Code are as follows.

- To safeguard the academic standards of UK higher education.
- To assure the quality of the learning opportunities that UK higher education offers to students.
- To promote continuous and systematic improvement in UK higher education.
- To ensure that information about UK higher education is publicly available.

(General Introduction to the Quality Code QAA, 2014)

Because it is written as a code, the Quality Code can be seen as a way to provide the 'rules' and a language expressing expectations for the higher education sector (see chapter one). Thus, the Quality Code applies to any provider delivering higher education, or at least any provider that is reviewed by QAA across all four of the UK nations and overseas. It states that it is there to protect the interests of UK higher education students regardless of where they are studying or whether they are full-time, part-time, undergraduate or postgraduate students. It claims to do this through a series of key underpinning values taken from The General Introduction to the Quality Code QAA, 2014)

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- Every student is treated fairly and with dignity, courtesy and respect.
- Every student has the opportunity to contribute to the shaping of their learning experience.
- Every student is properly and actively informed at appropriate times of matters relevant to their programmes of study.
- All policies and processes relating to study and programmes are clearly explained and transparent.
- Strategic oversight of academic standards and academic quality is at the highest level of academic governance of the provider.
  - All policies and processes are regularly and effectively monitored, reviewed and improved.
  - Sufficient and appropriate external involvement exists for the maintenance of academic standards and the quality of learning opportunities.
  - All staff are supported, in turn enabling them to support students' learning experiences.

What is interesting about these values of the Quality Code is that, even though they are written in more management-style terminology, they are remarkably similar to some of the proposed values for higher education that Watson provides in his work about civic and community engagement (2007). Watson suggests there are 'Ten Commandments useful to encapsulate the values of higher education'.

The 'Ten Commandments' are edited from pages 104-106.

- Strive to tell the truth, which Watson suggests is about academic freedom and academic values.

- Take care in establishing the truth, which Watson suggests is about evidence and authenticity.

- Be fair, which Watson suggests is about equality of opportunity.

- Always be ready to explain, which Watson suggests is about accountability being inescapable and should not be unreasonably resisted

- Do no harm, which Watson suggests is about progressive engagement

- Keep our promises, which Watson suggests is because not doing so is less acceptable in an academic context.

- Respect your colleagues, your students and especially your opponents by listening and seeking ways to understand the other point of view.

- Sustain the community, which Watson suggests is about the obligations to the professional communities that make up the university sector.

- Guard your treasure, which Watson suggests is about the assets and capacity to operate responsibly and effectively.

- Never be satisfied, which Watson suggests is about continual improvement.

What this demonstrates is that, through providing a 'rule book, the Quality Code attempts' to embed what can be considered core values for higher education into the expectations that, as a code creates a framework for higher education providers to use. As Watson suggests (2007), it is important (*for higher education providers)* to 'know whether there is a single set of rules, or several [sets] and, if the latter, how far we can afford to fall behind in any of them while 'winning' in others'. Although Watson was discussing the merits (or not) of university rankings rather than the development of the Quality Code, he usefully goes on to question how far the values of what he calls the 'inner game' of a university should be codified to the outside community.

What the Quality Code does is provide a codification of values that is generalised across the sector.

The Quality Code is made up of a general introduction and a series of separate chapters grouped into three parts: *Part A: Setting and maintaining academic standards; Part B: Assuring and enhancing academic quality* and *Part C: Information about higher education provision.* It is published by QAA in an online format and summarised in a brief guide (QAA 584-Jan14). The Quality Code uses the concept of 'expectations' (referred to as Expectations), largely created as a result of the recommendation for clarity on what were essential requirements for higher education providers (Academic Infrastructure Evaluation Report 2009).

The Evaluation Report (2009) made further recommendations on how the Academic Infrastructure needed to change in order to remain fit for purpose as a framework for UK higher education providers in setting and maintaining academic standards and assuring and enhancing the quality of the learning opportunities they provided. However, detailed evidence from various different higher education providers showed the positive impact the Academic Infrastructure had had on higher education's quality assurance arrangements. This is why the original content of the Quality Code could be based in the Academic Infrastructure.

However, the Evaluation Report also identified areas where further improvement was necessary and contributed to changes and additions made to the material included in the Quality Code from the Academic Infrastructure. Recommendations included changes to provide more clarity in determining the difference between academic standards and academic quality (based on the definitions of these terms as given above) and providing clarity in determining which elements of the Academic Infrastructure were 'essential requirements' and which were 'provided as guidance'. This is important because it paved the way for the development of the Expectations included in the Quality Code, which assumed a 'mandatory' status given their subsequent use in the Higher Education Review (HER).

The Quality Code defined the term Expectations (see General Introduction to the Quality Code QAA, 2014) as follows.

'…setting out what higher education providers expected of each other and what students and the general public could expect of higher education providers.

The Expectations in the Quality Code were supposed to make clear the elements of the guidance that providers were 'required to meet' and could assume had a 'mandatory' status, because QAA determined whether the Expectations were being met through the reviews it conducted. Findings from reviews were subsequently published, including judgements made about a higher education provider based on whether the provider was meeting the Expectations of the Quality Code. This study goes on to demonstrate how if the Quality Code had not been developed in the way it was, it would have been less likely that the Expectations would have developed this necessary 'mandatory' status without legislation to impose them.

Chapter four considers the way the Quality Code was developed in more detail and the effect on that development has on the expertise from within the sector providing the self-regulatory part of the self-/co-regulatory nature of the higher education sector that developed post-2010/11. The Quality Code was developed by QAA, which retains the ownership of the Quality Code. This is important for the co- part of the self-/co-regulatory nature of the regulatory framework. The nature of QAA as an organisation provides this thesis with an important context for why the way the Quality Code was developed and how it was able to create the 'mandatory' status of the Expectations without legislation. In creating the Quality Code and in undertaking the reviews of higher education, making judgements about higher education providers' adherence to the Quality Code, the QAA played a regulatory-type role without a legislative basis from which to do it. It is therefore important to provide more detail on the nature of the QAA to give further context for the research question.

The Quality Assurance Agency for Higher Education

As referred to in my reflective statement I explored the history leading up to the creation of the QAA in depth in my Institutional Focused Study completed as part of my EdD programme (IFS, Bohrer 2011). However, in terms of the research question, it is important to consider how QAA was set up and its 'ownership' so its role within the regulatory landscape is understood and it is clear why the Quality Code became so important in this landscape. Established in 1997, QAA is a

company with a mission to 'safeguard standards and improve the quality of UK higher education wherever it is delivered around the world'. The terms of academic standards and quality, as discussed above, can be contentious but, in terms of this thesis, it is the QAA's understanding of these terms that is relevant as it provides the remit under which the Quality Code was developed.

QAA is a company with charitable status that was set up through a memorandum of association. A memorandum of association is a statement made by each subscriber to confirm its intention to form a company and become a member of that company. Importantly, as part of a self- and co-regulated system (see chapter one), QAA is independent from government but is formed of four members: Universities Scotland, Universities UK, Higher Education Wales and GuildHE Limited. These organisations represent various elements of the higher education sector and this means QAA is owned by the universities of the UK and some specialist higher education colleges but not all of the higher education sector that includes the alternative providers.

In order to give the public confidence in its judgements about higher education and thus demonstrate it has not been subject to 'regulatory capture' (see chapter one), QAA needed to be seen to be an organisation that was operationally independent from the sector it judges and for which it provides some regulatory function (QAA 773-Jun 2014). Therefore, as a company, it has a Board of Directors. The Directors come from a variety of backgrounds, and as a Board appoints one student or student representative as one of its members. The Board appoints a Chief Executive, who acts on behalf of the Board as its delegated authority. The Chief Executive is responsible for the management of the company and reports to the Board which given the wide variety of expertise is able to prevent any decisions made by the Chief Executive that could be considered as being subjected to 'regulatory capture' being ratified (QAA articles of resolution and memorandum of association – QAA board 2012).

QAA fulfils these objectives by developing guidance and reviewing higher education providers, checking on their academic standards and quality. Hence, the QAA has the authority provided by the higher education sector to establish the Quality Code. The review work QAA completes occurs under contracts provided by the funding councils, which are meeting their requirements for Quality Assessment as set out in the 1992 Act (see above). The method QAA uses to undertake that review work is developed through negotiation with the funding councils and the sector it is

reviewing. Currently, for England, this takes place through Higher Education Review (HER).

QAA introduced HER as a review method for England in 2013, following the policy direction outlined in the White Paper (2011). HER uses the code QAA established in 2011-13 as the reference point for reviews. In other industry sectors, these functions are carried out by the regulatory body endorsed through statute, for example Ofsted (see chapter one), but in the absence of legislation and in the self-/co-regulatory system, as outlined in chapter one, QAA has an important part to play.

HER is a peer-based review process that checks higher education providers to see whether they are meeting all the Expectations as set out in the Quality Code. Through the detail of the method of HER and taking account of factors such as track record, previous engagements with QAA and evidence produced as part of the self-evaluation process, QAA considers HER risk based and proportionate. It builds on previous quality assurance review methods used by QAA; for example, Institutional Review of England and Northern Ireland (IRENI), Subject Review and Institutional Audit among others. Without legislation, all these methods used the underlying principle that these were reviews not inspections. This emphasised the self- and co-regulatory nature of the system. HER is undertaken by reviewers who are not employed by QAA but who are people who work, or have recently worked, mostly in higher education, or who are studying in higher education. They are paid for the review work they do but are not QAA employees. It is not QAA officers who make the judgements. However, it is QAA officers who co-ordinate the process, that are responsible for publishing the results and were responsible for producing the Quality Code against which the judgements of a HER are made but they do not actually make the judgements. This is important in understanding the consultative nature through which the Quality Code was developed and important for understanding the tensions in the self- and co-regulatory aspects of the system.

This second chapter of the thesis has considered how English higher education is regulated. I have shown hoe the publication of the Browne Report/White Paper (2010-11) provides a rationale for this study being set within particular time and geographical boundaries. The policy objectives published through the Browne Report/White Paper resulted in several reforms to higher education. Of particular relevance to this study were the changes to the way higher education received its funds through the new student fee regime and increased diversity in the types of

providers of higher education. As a result of the publication of the White Paper, there was a subsequent increase in the marketisation of higher education in England. This required a more transparent regulatory framework, which was developed through the work of the Regulatory Partnership Group and the publication of an Operating Framework. However, the White Paper did not result in the expected new higher education law and this created the particular environment in which the regulatory landscape for higher education developed.

I explained the self- and co-regulatory system of regulation in higher education through reference to the Quality Code created and used by the QAA, an organisation owned by the higher education sector and independent of government. Subsequent chapters of this study consider the evidence for the consultative nature of the development of the Quality Code and how this contributes to the development of regulation in English higher education in the absence of a legislative framework.

Chapter three: Method

Chapter three considers the methods used in this study to collate the evidence on the consultative nature of the development of the UK Quality Code for Higher Education (Quality Code) and how this has contributed to a basis for regulation in English higher education. This study draws on the perspective of my professional role in the process of developing the Quality Code and as an employee of the Quality Assurance Agency for Higher Education (QAA). The original concept for the Quality Code followed the evaluation of the Academic Infrastructure, a research project I led between 2009 and 2011. During the period of development of the Quality Code, I had particular responsibility for the publication of several specific chapters and I have undertaken some QAA review work of higher education providers. Thus, the study comes from an 'insider' perspective, which, while it provides intimate understanding of the data, also limits the study because of the need to remain impartial on the research findings and not to act as may be necessary in my professional role. This chapter discusses the relative merits of this 'insider' research and the associated ethical dimensions of the way the study has been completed.

The methodology used in this study

This study uses a number of research strategies, analysing both published and unpublished documentation. I have completed a secondary analysis of data previously collected by QAA while developing the Quality Code. While I analysed the information collated mostly from a qualitative perspective, much of the original data used for the secondary analysis was collected using quantitative data-collection principles. Some of the early outcomes of the review of higher education providers published in the QAA knowledge bases and used in the report Higher Education Review First Year Findings 2013-14 (QAA, 2014) helped to triangulate the evidence used in this study. This approach provides multiple sources for the evidence used to address the research question.

'A handbook of Mixed Methods' (Tashakhori and Teddlie, 2003) shows that research with mixed-methods designs evolved from the notion of 'triangulating' information from different data sources. I have used different research strategies to triangulate the data used in this thesis. However, Tashakhori and Teddlie (2003) also suggest that mixed methods research is more complex than a simple combination of quantitative

and qualitative methods. They suggest mixed methods research is more of a 'Gestalt', or a bringing together to produce something more from the combination of the quantitative and qualitative methods. It cannot be justified that this study uses a mixed-method approach but instead uses a number of different qualitative and quantitative research techniques.

With quantitative approaches to data analysis, the emphasis is on measurement. It is a model taken from the natural sciences that tries to establish objective knowledge, that is knowledge that exists independently from people's views or values. Within the world of social science research, objectives for quantitative approaches usually try to determine relationships and patterns that can be translated from words to numbers. Using questionnaires provides a good example of such an approach (Sprat et al. 2004).

Qualitative research, on the other hand, tries to provide a way of understanding the world through human experience, making sense of or interpreting data through consideration of the meanings people attach to things. A good example is the use of interviews (Tull and Hawkins, 1990).

While I have not completed mixed methods research I have drawn on the approach such as using data collected through a quantitative survey approach and converting data from the free text response boxes into narratives that are analysed qualitatively (Miles and Huberman, 1994). The primary data used in this thesis was originally collected by QAA through a questionnaire, a traditional quantitative data collection technique. However, the questionnaire was designed around mostly open-ended free-response questions more traditionally associated with qualitative data collection techniques. This study uses the original QAA data and a thematic framework to provide a secondary data analysis in creating the narratives analysed in chapter four. Mixing the methods of data collection and using more than one methodological tradition draws on the approach of analysis described above (Greene 1989). Through this integrated approach, it is possible to achieve a more sophisticated understanding of the research topic than through either approach alone (Cresswell, 2005).

Narratives are an account (spoken or written) of connected events and can often be thought of as storytelling. In creating a narrative as a way of recording personal and/or cultural stories, narratives provide an entity that can be useful in making

interpretations about specific contexts. The narrative as a method of research in social science is an extension to the use of the case-study approach, often allowing the deeper more contextual nature of a 'story' to be explored. In this study, written narratives about higher education culture are created as the methodology for providing a way to make the interpretations required when considering the research question. As a technique, it is an extension of the method used in my IFS research, where I used a case-study approach. However, in this study a much more detailed approach is necessary and achieved through producing narratives from a secondary analysis of data originally collected during the development of the Quality Code. By using data in such a way, this narrative approach allowed me to create a series of stories about how that code was developed.

The process of development of the narratives follows a constructionist approach, whereby meaning is not discovered but is constructed (Crotty, 2009), and is particularly appropriate to a study about the development of a code. This is because, through combining the individual elements or quotes together to produce the narratives, the process itself is demonstrating a similar process akin to the development of a code; that is in creating the narratives I am capturing, through written comments, a process that is codifying aspects of higher education culture.

I created these narratives (see chapter four) to provide a way of presenting the analysed material for further use in discussion of the importance of the nature of the development of the Quality Code's contribution to the basis for regulation in English higher education (see chapter five). More about how the narratives were created is shown below. Limited quantitative analysis from published data sources provided the contextual information about the environment in which these narratives exist (see chapters one and two). However, in addressing the research question, an additional element of triangulation of the evidence utilised the findings from the QAA review method.

The theory of triangulation is about testing evidence from one source through collection of evidence used to back up those judgements from other sources. As the narratives demonstrate, developing the Quality Code used the principles of triangulation, as it used the information gathered from advice given by practitioners through participation in Advisory Groups, evidenced through meetings with interested stakeholders and tested against consultation responses. Together this triangulated and consultative process was used in drafting the final text of the

Quality Code parts/chapters. The final published text was then used to inform the methods developed by QAA to review higher education providers. My professional experience of being involved in all these processes was helpful in understanding the responses made in the formal consultations that are used as the basis for the secondary analysis that was undertaken as part of this study and in the creation of the narratives, as well as providing me with an understanding of how the final published text is used to monitor higher education providers.

Data used for this study

Data used for this study comes primarily from an unpublished data set that belongs to QAA. A secondary analysis of this primary data collected during the consultation period for the Quality Code (September 2011 to October 2013) provided material for the creation of narratives (see chapter four). Using these narratives triangulated with the evidence from the QAA knowledge base recording review outcomes and recommendations, I show how the Quality Code successfully became one of the building blocks of higher education regulation in England without a legislative framework to support it. The volume of data available from the published and unpublished documents represents information collected by QAA over a two-year period. During this period, 38 public events were held, with 1,520 delegates attending venues in seven different UK cities, and 10 online public consultations received over 1,380 written responses. It was the consultation data collected during the period September 2011 to September 2013) that provided the core of the data available for analysis.

The basis of the work on which the Quality Code rests is the Evaluation of the Academic Infrastructure and subsequent changes (QAA 2009-11). The approach taken in the evaluation was primarily one of consolidating, collating and analysing existing information, derived from a range of activities previously undertaken by QAA and other bodies. Advised by a Sounding Board of representatives from higher education providers and higher education representative bodies, this information was used to inform the writing of a discussion paper. In spring 2010, the discussion paper was circulated to individuals, higher education providers, organisations and public bodies with an interest in higher education, and to students through their representative bodies to discuss their experiences associated with the various individual elements of the Academic Infrastructure.

In response to the discussion paper, 118 replies were received from higher education institutions in all parts of the UK, further education colleges, professional, statutory and regulatory bodies, UK representative bodies and individuals. Also during the period in which the discussion paper was available for comment, four round table discussion events were held across the UK, at which over 200 delegates considered questions relating to the Academic Infrastructure. Feedback was collected from the round table discussion events and made available on the QAA website. QAA officers, including myself, also held discussions with a number of groups and networks representing different interests within the higher education sector.

The evidence from all these sources informed the format of the resulting Quality Code. That some higher education providers had the powers to award degrees and others did not, meant some aspects of the Academic Infrastructure were less relevant to some providers. However, the provision of one reference point for all higher education provision that was also UK wide was seen as being important. In terms of this study this has the effect of helping to emphasise the nature of a higher education community despite the diversity of that community.

In response to the findings of the evaluation, QAA proposed restructuring the component elements of the Academic Infrastructure into a new 'UK Code of Practice for standards, quality and enhancement in higher education'. The details of the proposed changes were set out in a consultation document available from the QAA's website (QAA December 2010 to March 2011). The Code of Practice, the report suggested, would have two parts: one dealing with academic standards and one dealing with academic quality and enhancement. Each part would contain several chapters, which would be made available to download separately from the QAA's website.

The report suggested the new Code of Practice would form the definitive reference point for all those involved in delivering higher education that led to an award from, or was validated by, a UK higher education provider. It emphasised the importance of it being relevant to all students, whatever their mode or location of study, including undergraduate and postgraduate programmes (see General introduction to the Quality Code QAA, 2014).

A report summarising the responses to the consultation was published in the summer 2011, with the result of the extensive consultation being the UK Quality Code for Higher Education. From September 2011, QAA began a programme of development and implementation to put the Quality Code in place.

The consultative nature of the development of the Quality Code

In terms of the research question, understanding the process used to develop the Quality Code is important. This process was itself open for public comment, as it was included in the consultation that followed the evaluation of the Academic Infrastructure. A protocol that summarised the process to be used was published (see Appendix two) alongside a timetable for the work covering the two-year period 2011 to 2013.

The process for developing the Quality Code comprised the work by the QAA, the involvement of an Advisory Group and a public consultation. Below I consider each in more detail to aid the understanding of the evidence used in creating the narratives (see chapter four). The evidence from the consultative development of the Quality Code for higher education shows how the process contributed to a basis for regulation in English higher education in the absence of a legislative framework.

The roles of QAA and the Advisory Group

The Standards, Quality and Enhancement team at QAA undertook development of the Quality Code. A QAA lead officer was allocated to the development of various parts/chapters and at least one other member of the team supported this lead officer. Work commenced with the selection of an Advisory Group. The Advisory Group's role was outlined in the 'terms of reference' provided to the group by QAA before their first meeting. The generic outline used by QAA for the 'terms of reference' adapted for each specific part/chapter can be found in Appendix three. Following meetings with the Advisory Group and often working with a specialist writer, QAA officers were responsible for producing a draft of a part or chapter of the Quality Code. This was then made available for public consultation before, with further advice from the Advisory Group, a final version was published. During the public consultation period, a number of discussion events were organised.

QAA selected Advisory Group members on the basis of their experience and expertise in the specific topic relevant to the part or chapter being developed. Representatives from a range of higher education providers were approached to join Advisory Groups and, as far as possible, members represented the four nations of the UK. Some members of the Advisory Groups were selected from a database that QAA established following an open call for nominations from higher education providers, others because of nominations from national organisations. For example, the National Union of Students nominated one of its staff officers and/or student representatives for each group. The Equalities Challenge Unit similarly nominated representatives for each of the various groups. QAA already knew some members of the Advisory Groups because they were higher education reviewers or had worked on previous guidance produced by QAA, while others were new contacts.

QAA asked the Advisory Group members to attend three meetings, contribute to email discussions and comment on drafts of the text for the chapters before publication. Many of the Advisory Group members also attended events held during the consultation periods for each chapter. The role of the Advisory Group was to provide advice to QAA. However, the following was stated in the terms of reference that were issued to the Advisory Group members.

> 'Responsibility for the Quality Code ultimately sits with the QAA Board. The advice provided by the Advisory Group will be communicated as necessary to the QAA Board through QAA's Directorate' (From the QAA terms of reference for Advisory Group members).

This meant that the advice from the Advisory Group was necessary for the development of the Quality Code but the ownership of the Quality Code remained with the QAA, which is important in providing the independence required in the self-/ co-regulatory regime to assure the public of the quality of higher education.

The role of consultations

The QAA's process for consultations at the time was similar to the process specified in other public bodies' consultation policies. It included a minimum of eight weeks when a draft version of a document was publicly available for comment before it was published in its final form. Comment about that draft came in the form of written responses from anyone who wished to send a submission to QAA. Consultations

were promoted through the use of 'circular letters' or open letters that were sent to the Head of Organisations and other stakeholders with an interest in the topic that was the subject of the consultation. Once distributed, circular letters (an example can be seen in Appendix four) were published on the QAA website. Consultations were actively publicised through the QAA news mailing bulletins, social media and press releases. The press releases often prompted articles in the trade press such as *Times Higher Education*. In addition, in support of the consultation, QAA organised free discussion events designed to support the process of providing written feedback through the formal consultation process. The discussion events enabled delegates to learn more about how QAA had developed the document on which they were being consulted and to share through discussion with other delegates, as well as QAA, how current practice related to the topic.

Many responses to consultations were made on behalf of an organisation (see table one). Delegates that attended QAA discussion events in many cases did so as a representative of their organisation, with attendance helping with their subsequent discussions in their own organisation about what to include in their consultation submissions. Delegates that have participated in discussion events have commented on how they created submissions on behalf of their organisations by discussing their responses at appropriate committees or holding focus group discussions in their institutions before submitting to QAA (Elbutlleti AQU, 2013). For QAA officers who were writing guidance, the events were helpful in understanding the wider political and social context in which individual higher education providers worked and discussed the issues the draft text raised.

This was a well-established model that QAA had used for the development of other documents that formed the guidance for quality assurance of UK higher education and that was used for the creation of the Academic Infrastructure (from 1997), the predecessor to the Quality Code. A similar format was used to develop the Quality Code. However, In order to maximise the efficiency of the processes and to reflect the speed and volume of work undertaken, an online dimension was added to the process. This took the form of a survey for each consultation exercise, hosted by commercial survey company SurveyMonkey.

Twelve public consultations about the Quality Code ran between September 2011 and July 2013. A mixture of closed questions and open response questions was used on the survey response forms. The format for each consultation used similar

questions modified slightly to make them appropriate for the particular topic covered by the individual consultation. A total of 1,383 responses were received. Table 1 below shows, in date order of the public consultations, the number of responses to each consultation and shows how many of those who responded did so on behalf of their organisations.

Table 1: Responses to the Quality Code public consultation showing how many respondents responded on behalf of their organisation

Chapter consulted	Date	Responses in published summary	Number who responded on behalf of their organisation	Percentage of responses on behalf of their organisation
B7: External examining	Jul–Sep 2011	151	124	82%
Part C: Information about higher education provision	Dec 2011–Feb 2012	143	104	73%
B5: Student engagement	Feb–April 2012	146	118	81%
B11: Research degrees	Jan–March 2012	143	108	76%
B3: learning and teaching	June–July 2012	119	102	86%
B10: Managing higher education provision with others	Aug–Oct 2012	125	105	84%
B4: Enabling student development and achievement	Nov 2012–Jan 2013	91	85	93%
B9: Academic appeals and student complaints	Nov 2012–Jan 2013	112	95	85%
B1 & B8: Programme design, development and approval; Programme monitoring and review	June–July 2013	89	77	87%
B6: Assessment of students and the recognition of prior learning	June–July 2013	89	77	87%
Part A: Setting and maintaining academic standards	June–July 2013	89	77	87%
B2: Recruitment, selection and admission to higher education	June–July 2013	86	76	88%
Total		**1,383**	**1,148**	**83%**

The individual QAA officers used all this data as the various chapters/parts of the Quality Code were published between December 2011 and October 2013. However, taken together, this produced a vast data set, which was worthy of

secondary data analysis. This thesis uses data collected by QAA and through a secondary data analysis produces a series of narratives, presented in chapter four.

Creating narratives – a way of sampling from available data

This study can be seen largely as 'insider research'. 'Insider' researchers usually study a group to which they belong, while 'outsider' researchers tend not to belong to the group they are studying (Breen 2007). Clarifying the role of a researcher may be thought necessary to make the research results credible, although Breen considers that, rather than a dichotomy and clarity between 'insider' and 'outsider' roles, there is more of a continuum to the role researchers have with their involvement with the group they are researching. As a member of QAA staff, I had the advantage of being an 'insider' in that I understood to an extent the culture being studied. This allowed me to interpret the data from a position of prior knowledge, although I did not work in a higher education provider, so was slightly removed from the sector.

Bonner and Tolhurst (2002) identified advantages to a researcher being an 'insider' as having a greater understanding of the culture being studied, being less likely to alter the flow of the natural social interaction and, therefore, being more likely to establish a climate whereby the truth was told. Generally, they consider that 'insider' researchers are thought to understand the politics of an institution, knowing how best to approach people. 'Insider' researchers are thought to have the knowledge that an 'outsider' takes time to acquire. However, as DeLyser (2001) cautions, by being an 'insider' researcher, there is potential for a loss of objectivity, leading to the wrong assumptions based on prior knowledge, causing a bias to the research. As a member of QAA staff and not working at any one type of higher education provider, this mitigated against bias in the interpretations from any one perspective and shows how my 'insider' role can be placed along the continuum towards 'outsider'.

However, drawing on the experiences from my IFS analysis, I needed to take account of any potential prejudices and preferences that could occur from my position as a member of the team developing the Quality Code and that could influence my research findings. In addition, in my professional role, I would usually be expected to make some form of intervention to edit material to be published following the results of a survey but, as a researcher, I needed to keep some distance from the data used in order to complete the secondary analysis rather than reuse data to publish additional guidelines.

As an 'insider' in the process of developing the Quality Code, I had the advantage that I could build on my expertise and knowledge when completing the secondary analysis. There is an ethical consideration in managing the balance of being an 'insider' when completing research, which relies on keeping focus on the research question even though this can sometimes compete with professional priorities when working on a study. However, working with Advisory Group members, presenting at numerous discussion events and holding various meetings with individual stakeholders gave me a great understanding of a large range of sometimes conflicting views. In turn, this provided valuable insight useful for the further analysis of the data previously collected as part of the consultation process for the development of the Quality Code. Further ethical considerations are discussed below.

With over a thousand responses, many of them free text (typically 37 pages of text generated from each consultation), there is a lot of data. However, much of it related to very specific points to do with the relevant part/chapter under construction. Making sense of the information relating to the broader development of the Quality Code was challenging. Using a sample made using a vast data set much more manageable and gave a way of establishing the information relevant to the research question in this thesis. This is important because the reason for the original collection is different from the purpose of this secondary data analysis. By making data more manageable, it became possible to use the more appropriate and relevant text allowing for an in-depth understanding to be achieved. Therefore, I used a sample to establish the narratives (see chapter four) that help to understand the way the Quality Code was developed.

There are two elements to the sample created. First, from the total number of responses collected by QAA, the last question in each of the consultations was 'any other comments' (or a similar form of words). Looking through the total data available, it was in response to this last question that broader, more general comments about the Quality Code were most frequently made. For this study, I therefore took all the responses to the final question of the consultations and put them in a file. I then extracted those responses that were relevant to the study (see appendices five and six). By using categories, it was possible to decide on the four areas for the narratives about the development of the Quality Code. The second element of the sample looked in more depth at the creation of the Expectations.

Using a detailed example of one Expectation, I have been able to demonstrate the process of how what became 'mandatory' was created (see appendix seven and eight).

The original survey data set had been established deductively using preconceived frameworks. Each survey had focused on specific aspects for the survey questions determined prior to the data collection phase. The questions used in the different consultation surveys were largely similar but with variations to the questions dependent on the areas that the specific Advisory Groups wanted to collect information about from the higher education sector. This deductive approach to collecting the data is dependent on an epistemology based largely on pragmatism.

Creating the narratives was achieved through a thematic analysis (the recording of patterns, which is traditionally a technique with its roots in qualitative analysis). In order to develop the thematic analysis, the data was categorised or coded (coding capturing the intricacies of data sets). Coding the data is the systematic approach to organising the data and so being able to gather something meaningful from parts of the data as it relates to the specific research question. One suggestion for the various phases associated with coding is determined by Robson (2002) as follows.

1. Becoming familiar with the data.
2. Generating some initial codes (the aim of data reduction means some labels and categories can be created).
3. By combining several codes together some overarching themes can be established.
4. Consideration of how the overarching themes from the data help to support the theoretical perspective.
5. Consideration of what then is particularly interesting about the themes allowing decisions to be made about which themes are used in reporting and answering the research question.

Using this process, I developed the following categories and coded the material accordingly (see appendix six).

- Category one: The process of developing the UK Quality Code and the importance of being heard in the process and of those in the sector taking the process seriously.

- Category two: Compliance with the code, building the case towards developing the 'mandatory' which is linked to how the code is used and monitored.

- Category three: The role and boundaries of the role of the QAA.

- Category four: The way it is written, duplication, structure and purpose. The audience for which it is intended.

- Category five: Consistency and importance of definitions.

The qualitative analysis that was subsequently undertaken used a constructionist tradition by being primarily interested in the analysis of the coded material to create narratives (see chapter four). By using the two subsets (the narratives and the example of developing an Expectation), it was possible to demonstrate the consistencies in responses. However, what must be noted is that responses albeit critical at times were from an engaged group of people rather than the wider public.

The use of data sampling is a quantitative process but in using the samples to create a narrative that provided material for a discourse, the analysis is much more qualitative. By developing the two processes together, it shows how a number of research strategies were used.

Ethical considerations

The study aligned to the BERA ethical guidelines.

Ethical considerations for this study are about the confidentiality of data originally collected by QAA in response to public consultations. I confirmed with the QAA Information and Records Manager that I could use QAA data for the proposed secondary analysis. (I also had verbal agreement from my line manager). They agreed it was acceptable to use the QAA data sets as long as I put appropriate checks and balances in place to assure respondents of anonymity. When the QAA collected the data, it did so with a clause attached saying it might use the information collected for other purposes. As QAA supported this EdD work, it agreed that I could use these data sets. This raises a possible concern about the findings, as it needed to be clear that QAA could not influence the findings. I had no reason to think it would, as there is precedent for using QAA data in other secondary analyses. For example, QAA has given permission for university research teams to use some QAA data in their research work as commissioned by

QAA, including work undertaken by a university research group on student engagement, which was given access to the Quality Code Chapter B5: student engagement consultation data. The findings from the student engagement research are published on the QAA website (Student Engagement in Quality Assurance and Enhancement: institutional and study body practices QAA 2012-13).

All the public consultations for the development of the Quality Code were made available online using the SurveyMonkey software and the surveys kept for two years after completion. Not all the surveys still exist in this format on the original software but all the survey results were saved as an Excel file in the relevant folder on the QAA central filing system. The Head of Quality and Standards and the Information Manager at QAA gave me permission to use the raw data files providing I used the data anonymously. They asked to remove any names/organisations from the data sets that I kept on non-QAA computers or data keys rather than in the QAA's secure computing environment.

As a precaution to maintain anonymity, I proposed using a reader from QAA to check the appropriate sections to ensure particular institutions could not be identified. This is the anonymity check I agreed with the QAA Information and Records Manager and was a sensible suggestion to refine the methodology for this study. The QAA reader completed this activity in March 2015 ahead of the thesis being submitted and confirmed no individual higher education provider could be identified.

There are limitations to making the data anonymous. If the responses used in creating the narratives cannot be attributed, they cannot be classified by the institution or organisation that made the response. This limits the analysis of the data, as I was unable to identify trends from particular providers. However, for a Code that is relevant to higher education in all its forms, analysis across types of provider becomes less appropriate, as who said what is less important than what is said in the responses.

Creating the sample

Each consultation was administered using Survey Monkey and, at the end of the consultation period, the QAA officer with responsibility for the development of the specific part/chapter was given both an Excel spread sheet and a pdf version of the

responses to use with the Advisory Group members as appropriate. These responses had the names of the individuals and the higher education provider from which they had come. To use the data for this study, the data first had to be made anonymous and the name of the respondent and provider had to be removed before selecting the responses used in the sample. Over the period of two years in which the consultation took place, the consultation questions changed slightly to reflect the specific nature of some chapters that required specific questions to be worded in a certain way or for a specific audience. Therefore, the questions used to compile the total data set varied slightly and were not completely consistent.

However, the last question was always a variation of the question 'any other comments'. Responses to this generated a rich source of information about the Quality Code more generally rather than the specifics of the particular topics relevant to the specific consultations. I downloaded the free text from these questions to form the basis of the sample used to create the four narratives. I downloaded files from Survey Monkey to Excel and imported them into Word documents before coded them. As I subsequently used illustrative comments in creating the narratives, there was no need for further qualitative analysis using computer software.

As different groups of QAA staff and specialist writers analysed each of the consultations, I have not attempted to re-clean the raw data but made the decision to use the verbatim responses as given. Not all the published reports and raw data totals are the same. There are several likely reasons for this with the main one being the inclusion of late submissions sent by email after the data cleaning of the online survey responses had taken place (duplicates and occasional abusive comments towards named academic staff were removed). For this study, I was interested in the responses and what was said, so I have used all the raw data as downloaded from source.

Evidence from the consultation process

From the coding of the comments, I created four narratives. The first provides examples of how higher education providers engage with the concept of the Quality Code in totality, i.e. not just its component topics but as a whole code. This is important because it establishes a broader concept of a code useful when considering regulation, as it provides criteria for that regulation (see chapter four:

Narrative one: Developing the Quality Code: engaging with the concept). The second narrative uses comments from the responses to the consultations that help with understanding the process of how the Quality Code was developed. This is important because this demonstrates that higher education providers wanted to be part of the consultative process and took their involvement in the process very seriously (see chapter four: Narrative two: Developing the Quality Code: the process).

The third narrative is provided to aid an understanding of the importance of the way the Quality Code was written, not only the content but the tone and style, demonstrating a purpose for the Quality Code within a regulatory framework while still being a useful tool for enhancement (see chapter four: Narrative three: Developing the Quality Code: creating a tone and style).

The final narrative shows within that regulatory purpose how use of particular terminology, such as 'mandatory', is understood and how 'mandatory' is then seen to be monitored. This is important because, in the absence of legislation, it is about how the regulatory criteria can be enforced (see chapter four: Narrative four – Developing the Quality Code: engaging with what is 'mandatory').

Together, these four narratives start to provide a picture of how the academic standards and quality regulatory building blocks were established and how they have the power to work as regulation without a legislative basis.

However, in the absence of a legislative framework, the status of a code within a regulatory framework can be questioned. The Operating Framework (see chapter two) tries to offer a potential solution using the idea of building blocks for regulation. As only one of these building blocks is about academic quality and standards, it helpfully demonstrates a boundary for the potential influence of the Quality Code. In turn, by using the term 'mandatory' Expectations, the Quality Code gives an authority to its content (see chapter two). In support of the argument, it is useful to consider in more detail how the 'mandatory' Expectations were developed See chapter four which uses the example of the development for the Expectation from chapter B4: Enabling student development and achievement. This Expectation was used as it had a high proportion disagreeing with the wording of the original Expectation. Table two shows that chapter B4 attracted a number of comments and disagreement with the version of the Expectation put forward. From my 'insider'

perspective, it was also one of the chapters that I was responsible for and a chapter
that prompted discussion about how aspirational the Expectation ought to be.
Therefore, chapter B4 provided a good example to use to explore how the
consultation influenced the final version of the published Expectations.

**Table two: Respondents' agreement with the wording of the draft
Expectations**

Chapter consulted	Responses in published summary	Yes	No	Number of comments
B7: External examining	151	125	16	35
Part C: Information about higher education provision	143	73	31	58
B5: Student engagement	146	93	35	59
B11: Research degrees	143	84	17	29
B3: Learning and teaching	119	51	67	89
B10: Managing higher education provision with others	125	68	32	49
B4: Enabling student development and achievement	91	39	46	63
B9: Academic appeals and student complaints	112	46	10	56
B1/B8: Programme design, development and approval/ Programme monitoring and review	89	60/63 avg. 62	15/10 avg. 12.5	26/25
B6: Assessment	89	59	17	27

of students and the recognition of prior learning			
Part A: Setting and maintaining academic standards	89	64/66/68/68/64/66/64 avg. 67	13/11/9/9/13/11/13 avg. 11	26/20/25/22/25/19/25
B2: Recruitment, selection and admission to higher education	86	64	13	60
Total	**1,383**	**831**	**307**	**738**

Note: The proportion of expressed opinions in agreement with the Expectations was 74%, which is a high level of support. However, many of those who agreed with the Expectation made comments. Overall, 738 comments were made about the different Expectations.

The third chapter of this thesis has described how the evidence presented in the following chapter was collected. The following chapter details the narratives created from the consultation responses collected as part of the development of the Quality Code. The following chapter also assesses the development of a particular Expectation created for one chapter of the Quality Code. Through triangulation of the findings from this study with the published findings from the first year of the Higher Education Review, chapter five goes on to demonstrate how criteria for regulation can effectively be judged through a peer review process. Chapter five also draws on political science theories of democracy and civic communities to explore the importance of the process used in developing the Quality Code to helping to embed the success of the regulation, especially where there is no legislative basis.

Chapter four: Results

This chapter considers what the consultative nature of the development of the UK Quality Code for Higher Education (Quality Code) is and what evidence from this process can be considered to support a contribution to a basis for regulation.

Previously, see chapter two, it has been shown by using published Grant Letters, Contracts and Memorandum of Understanding between the Higher Education Funding Council for England (HEFCE) and universities how the concept of regulation for higher education in England had relied on working in partnership. The Further and Higher Education Act 1992 (section 70) gave HEFCE a statutory role in quality assessment. However, regulation of higher education in England was not clearly identified until, following the events of 2010, (see chapter two) the Regulatory Partnership Group was established. With the work of the Regulatory Partnership Group, there came an explicit acknowledgement that academic quality and standards formed a building block of regulation (see Appendix one).

What this building block consisted of depended on universities own robust internal quality assurance mechanisms. The Quality Code (already in development at this time) was able to provide a framework that could be used by higher education providers to align their own internal quality assurance with national expectations on academic quality and standards. Demonstrating how the framework was developed shows in part how regulation became embedded within higher education after October 2010. The Independent Committee on Student Fees and Funding published its report 'Securing a sustainable future for higher education: an independent review of higher education funding & student finance' (the Browne Report). The government response to this report – the White Paper 'Higher Education: Students at the heart of the system' published in June 2011 – shows how without introducing any additional or specific legislation the landscape for higher education in England changed. Without the Quality Code, one of the building blocks of the regulation of higher education would be difficult to understand. Given the absence of legislation, this chapter argues that something similar developed in a different way is likely to have been less effective.

The process of Higher Education Review (HER) assesses whether higher education providers meet the expectations of the Quality Code through. HER was developed

by QAA as a result of the policy direction set out by BIS in 2011 in the White Paper (see chapter two). It is possible to show that the regulation developed through the Quality Code is embedded in higher education through the judgements made as part of HER. In the first year of operation, 2013-14, QAA reported that of the 47 higher education providers reviewed during the year, 31% received an unsatisfactory judgement. Of these, QAA judged that 13% of providers had 'not met UK Expectations' and the rest 'required improvement to meet Expectations' (QAA 1007 Dec-2014). Although higher education providers have a say in the criteria by which they are judged, the system of co-regulation means once national expectations are agreed, providers are required to abide by the 'rules' and will be judged accordingly.

The previous chapter considered the methods used by this study to generate the evidence produced in this chapter on how the 'rules' are agreed and therefore how the consultative nature of the development of the Quality Code for higher education contributed to a basis for regulation in English higher education. The chapter outlined how secondary data analysis could take place on a sample of data established deductively using preconceived frameworks. I established a sample data set from the responses to the public consultations that took place during the development period of the Quality Code. I divided this data sample into two subsets, one of which I used to create narratives about the overall development of the Quality Code. The other subset used comments to illustrate in detail how an example of one Expectation was developed. By establishing a coding framework (see appendix six), it was possible to draw on analysis of the original documentation before completing the secondary analysis of data collected by QAA as part of the consultation process as the Quality Code was developed.

I outlined triangulation as an important concept binding together the various research approaches used in this study. Triangulation is also an important concept for the work of QAA, as the judgements made as part of the QAA review processes rely on the theory of triangulation and testing evidence from one source through collection of evidence to back up those judgements from other sources. The work done in developing the Quality Code also used principles of triangulation, gathering the advice given by practitioners who participated in the Advisory Groups and information from meetings with interested stakeholders and testing through consultation responses.

The study utilised 'insider research' and when carrying out the secondary data analysis, I was aware that I needed to take account of any potential prejudices and preferences that could occur because of my position as a member of the team developing the Quality Code.

However, I built on the advantages of my expertise and knowledge when completing the analysis, because through my professional involvement with the development of the Quality Code, I had valuable insight and an understanding of how sometimes conflicting views could be brought together in published material. This 'insider' knowledge used in formulating the narratives below is triangulated against the HER review findings from 2013-14 at the end of this chapter.

The Quality Code

The references in the narratives below relate to the structure of the Quality Code, which is as follows.

Part A: Setting and maintaining academic standards
Chapter A1: UK and European reference points for academic standards.
Chapter A2: Degree-awarding bodies' reference points for academic standards.
Chapter A3: Securing academic standards and an outcomes-based approach to academic awards.

Part B: Assuring and enhancing academic quality
Chapter B1: Programme design, development and approval.
Chapter B2: Recruitment, selection and admission to higher education.
Chapter B3: Learning and teaching.
Chapter B4: Enabling student development and achievement.
Chapter B5: Student engagement.
Chapter B6: Assessment of students and the recognition of prior learning.
Chapter B7: External examining.
Chapter B8: Programme monitoring and review.
Chapter B9: Academic appeals and student complaints.
Chapter B10: Managing higher education provision with others.
Chapter B11: Research degrees.

Part C: Information about higher education provision

Part C is shorter than the previous two parts and not subdivided into Chapters. It addresses how providers produce information that is fit for purpose, accessible and trustworthy.

Narrative one: Developing the Quality Code – engaging with the concept

This first short narrative sets the scene for the development of the Quality Code. It demonstrates how, through its involvement with the process of how the Quality Code was developed, the higher education community had an engagement with the concept of a code. There were no comments suggesting the work should not be completed. Instead, as the narrative demonstrates, comments were limited to suggestions for refinements to the content of the Quality Code rather than on whether the Code should exist (see Chapter five – analysis of the Evaluation of the Academic Infrastructure for further comment). The illustrative comments in this narrative taken from the responses to the various consultations in support of developing the Quality Code (2011-14) show how those working for higher education providers were engaging with the concept of the totality of a code.

> The concept of 'partnership' between student and institution, so prominent in other Chapters of the Quality Code, seems also to have been mislaid and the emphasis here is rather on the student being a passive recipient of support. (Consultation: Chapter B4)

> This chapter had a very different feel/style to the other chapters reviewed for this consultation. Some of the examples may be too explicit for example indicator 4 refers to wikis and podcasts which may become out-dated in a document of this nature. (Consultation: Chapter B6)

> As mentioned above, the explanatory text accompanying the indicators goes into far greater detail than explanatory text in other Chapters, thereby creating an inconsistency in approach between the Chapters. (Consultation Chapter B6)

> While the chapter is well-constructed overall, it is significantly different to the other chapters which have been developed both in tone and context. This

chapter has a more highly regulatory nature which is related to the high risk activity that is perceived from collaborative provision; however, this high risk tone can be seen to contain often lower risk activity such as placement learning which is advocated more widely in the future development of the sector. Therefore, the overall tone of the chapter could be more positive about working with others. (Consultation: Chapter B10)

Further, it is important to note that this chapter (as with Chapter B11) are different from all other chapters as they are an additional chapter which encompasses all other chapters. To ensure that this chapter is as clear as possible, (with the minimum number of indicators and no repetition) and the integrity of the code as a whole is maintained perhaps a section of the chapter could be initially devoted to explaining that the whole code applies and then stating specific indicators which refer to 'collaborative activity' indicators which are important in the code as a whole. (Consultation: Chapter B10)

This first narrative demonstrates the importance of engaging with the totality of the concept of the Quality Code, i.e. a code as a whole entity, rather than a series of isolated elements. The comments illustrate how the respondents to the consultations are looking for consistency of approach across the whole Quality Code and thus indicating their engagement with the concept of the totality of the Code. It is important for this study because establishing a broader concept about a Code provides a framework for the criteria for regulation.

The following three narratives are much longer providing more detail about the development of the Quality Code.

Narrative two: Developing the Quality Code – the process

Chapter three outlined the process of how the Quality Code was developed. The evidence provided in the narrative below shows how the higher education community engaged with that process.

Evidence about the importance of the role of the Advisory Group

Higher education providers that had a representative on an Advisory Group saw this as an active way of being able to participate in how the Quality Code was developed and, being part of the process, they often endorsed what was produced.

> Our institution has been represented on the QAA Advisory Group for this chapter and so has participated fully in its development. We feel this is a good piece of work by QAA and that the University can be positive in our response to it. (Consultation: chapter B2)

However, not all higher education providers could be represented on all advisory groups. Sampling and selection took place through a carefully managed process, creating representative groups able to provide the advice required. The names of the advisory group members and their affiliations were published in the annex of both consultation drafts and final publications. Sometimes the selection for the Advisory Group membership was not as representative as the sector would have wished and members' responses noted this failing.

> It is disappointing that the Advisory Group did not include a representative from a FEC that delivers HE. (Consultation: Chapter B5)

> We observe that the membership of the Advisory Group for Chapter B11 of the Code of Practice is constituted by two-thirds of HE Managers/Administrators and one-third of Academics with responsibilities for Research Degrees. We would have welcomed a higher proportion of Academics active in the area of Research Degrees. (Consultation: chapter B11)

In such cases, it was often possible for the QAA team to compensate for such inconsistencies in representativeness during the consultation period by approaching particular representative bodies and asking for comments or by finding additional members to join the Advisory Groups for the final meeting of the Advisory Group post consultation. This approach is recorded in some respondents' comments.

> We are delighted to have been approached by the QAA and thank you for giving us this opportunity to participate in this aspect of the Agency's vital work in the sector. (Consultation: chapter B3)

The comments also show how Advisory Groups were perceived to be used as part of the process of developing the Quality Code. Sometimes these comments showed support for the work of the Advisory Group, while at other times they were more critical of what had been produced. However, whichever end of this spectrum the comments were from, they all showed the dynamic engagement between a wider higher education community and the role played by their representatives who were members of an Advisory Group.

> The Advisory Group is diverse and this is reflected in the draft Chapter which has been put together very well. The Chapter seems comprehensive and places firmly on HEIs the responsibility for student support and evidence of this in their policies and processes. The fact that Chapter B4 will incorporate Section 8 and aspects of Section 3 of the old QAA Code of Practice in a wider Chapter on student support is deemed helpful and the inclusiveness and focus on enabling, expectations and independence are welcomed. However, it might be helpful to articulate more clearly to clarify what is meant by some of the more generic statements made in relation to support for a range of students (Consultation: Chapter B4)

> The Steering Group have produced a rather bland, uninspiring chapter that doesn't push forward student engagement. The title of the chapter indicates full consideration of all aspects of student engagement when this is not the case. By trying to please/placate all higher education providers this chapter does a disservice to the very good work that is already going on in our universities. By being more ambitious but acknowledging the challenge of apathy in the student body the chapter would have better served the sector. (Consultation: Chapter B5)

These comments show that the role the Advisory Group played as part of the consultative process was well understood by the community the Advisory Group members represented and was part of a process that elicited engagement by the higher education sector.

Evidence about the importance of the role of events in the consultation process

The process of consultation involved an online survey to collect written responses. To support the written activity, events that were free to attend were organised. The events

had some presentational content from QAA, Advisory Group members and the specialist writers working on the various parts and chapters but mostly these events were based on opportunities for discussion. Feedback from the events was published on the QAA website. This information was subsequently removed when the QAA website was updated but a sample event feedback report can be found in appendix nine. When completing their written consultation some respondents took the opportunity to comment on the events. The illustrative comments below show how the events and the Advisory Groups were seen as an important part of the consultation process.

> This is an important but particularly sensitive chapter of the new code and this was reflected in the range of comments made at the consultation day attended by a member of our XXXXX Section which suggested that significant further consideration of the proposed text would be required. (Consultation: Chapter B4)

> There was lengthy discussion against indicator 7. Perhaps QAA could commission a project to research practice in the sector which illustrates good practice with regard to 'effectiveness review' without it being mechanistic and simplistic e.g. simply counting attendance etc. (Consultation: Chapter B5)

> The consultation event was useful in understanding the context and application of the Chapter, but was scheduled one week before the consultation deadline. In future it would be helpful if these events could be scheduled in advance. (Consultation: Chapter B10)

> From my attendance at the recent QAA consultation event, it was useful to engage with others with a similar interest in the chapter and research awards in general and would welcome further sessions and the opportunity to share good practice with others in the sector in future once the chapter is implemented. (Consultation: Chapter B11)

The events were held in various venues around the UK but were not regional events per se. Delegates travelled to the venue they found convenient, or on a date they could manage. However, some comment was made when events were not held in particular locations.

> There is serious concern that no roadshows were held in Wales. Is there any
> Welsh involvement on the Panel? (Consultation: Chapter B11)

QAA added some additional events to the schedule when there was sufficient
demand (for example for Part C).

The comments provided above show how, combined with the role played by the
Advisory Groups, the events held during the consultation period contributed to the
development process in a valuable way and elicited engagement from the higher
education sector.

Evidence from responding to the consultation

The written consultation responses supplemented the contributions that had already
been made during the events as the following comment shows.

> The comments contained in this response do not include the input to, nor
> outcomes of, discussions that took place at the Consultation Event held in
> November in London as these were captured by the QAA on the day and it
> was felt unhelpful to duplicate them here.   We welcome the Chapter in
> principle. However, we would like to see a greater emphasis on providing
> principles which focus on the desired student outcome, with providers being
> left to decide how to enable students to reach identified points.   In general,
> the language needs to be tighter and more consistent and attention paid to
> ensuring it fits with the Indicator that is being described. (Consultation:
> Chapter B4)

Engagement in the consultation process was demonstrated not only by attendance
at events but also by the inclusive nature of how individual responses from higher
education providers were collated prior to submission. Before making a formal
response, higher education providers often discussed the consultation document
with students and staff through individual meetings and focus groups or at committee
meetings.

> We are pleased to report that our consultation included staff (faculty based
> and professional services) and students (students' union and student
> representatives). (Consultation: Chapter B3)

We are pleased to report that our consultation included staff (faculty based and professional services) and students (students' union and student representatives). The 'less is more' crisp and clear approach often taken in Student Charters would be worth considering for UK Quality Codes for HE. We would like to thank you for the opportunity to give feedback on this Chapter. We appreciate the hard work that has already taken place in producing the draft Chapter B3. (Consultation: Chapter B3)

During the process of responding to Chapter B5 Student Engagement a meeting was held with a representative from the university working in quality and standards. We both agreed that B5 was a very useful chapter that would help providers to get student engagement right. (Consultation: Chapter B5)

Respondents did not always consider the timing of consultations helpful in encouraging such participation, again demonstrating the higher education providers' desire for active engagement with the process.

On a practical note, the length of the new chapter, the repetition within it, the cross-referencing and the large number of individual expectations have made responding to the consultation a particular challenge, particularly given the relatively brief consultation window and the fact that said window coincides with the summer vacation. We understand and support the desire to progress rapidly with developing the new UK Quality Code, but the QAA might in future be more sympathetic to the normal pattern of activity in HEIs. Where appropriate, we would also consider it particularly helpful in consulting on revised chapters if the QAA could summarise separately, or otherwise highlight, what principles have been altered from the old Code of Practice. This approach is likely to engender more informed and helpful comment from respondents. (B7)

What became evident from the responses was the trust respondents showed in thinking that changes would actually be made following the consultation. In some cases, this trust appeared to be built on the practices QAA had used to develop previous guidance such as the Academic Infrastructure. However, as the first comment shows respondents were keen to make sure their comments were read.

In many questions, where I have stated 'No' or 'Disagree' I mostly agree but wanted to make sure that the comments are seen? (not sure if comments are still seen if the answer is yes but the prompt only asks for further text if the answer is no?) (Consultation: Chapter B10)

XXX recommends that the document is kept as brief as possible. We note it is expected that the next version of the chapter will look quite different from the current draft. We suggest it may be useful to consult on a second draft that is closer to how the final document will look before it is finalised. (Consultation: Chapter B5)

XXX welcomes the revisions that have been made to this guidance; they support existing good practice and go some way towards recognising the changes that have occurred in the sector since 2004. However, this is an increasingly diverse and complex area which we would suggest is reviewed more regularly to ensure that the guidance continues to be sensitive to sector-wide developments and the requirements of different funders. (Consultation: Chapter B11)

Further comments demonstrated the dynamic nature of the process, outlining the actions that would be required as a result of publishing. Comments show the development of the Quality Code as a process that the higher education providers were using as they developed their own internal quality assurance processes.

A general comment on consultations: this is one of five Quality Code consultations running concurrently. It may have been convenient for QAA to have revised the schedule for work on the Code, but this has been done with no apparent acknowledgement of the considerable burden this places on institutions (responding, mapping policies and procedures to the new expectations and indicators, and then implementation). (Consultation: Chapter B2)

This chapter is more comprehensive/inclusive than previous versions, and will allow HEIs to provide more comprehensive responses, policies, etc. (Consultation: Chapter B2)

> You've done a good job on a difficult task here, the reference point should
> be helpful to engender HEIs' greater coherence in their practices.
> (Consultation: Chapter B7)

The illustrative comments above used in creating this second narrative are
important examples because they demonstrate that higher education providers want
to be part of the consultative process and take their involvement in the process very
seriously. They also show that by engaging with the process of developing the
Quality Code, higher education providers own internal quality assurance processes
develop.

Narrative three: Developing the Quality Code – creating a tone and style

The second narrative above provides an understanding of the process of how the
Quality Code was developed. It demonstrated that higher education providers
engaged in this consultative process. The first narrative showed how higher
education providers engaged with the concept of the Quality Code in totality, not just
its component parts but as a whole. This is important because it can provide criteria
for regulation. This third narrative extends the idea of the Quality Code being a
single entity by considering how the tone and style was developed. An
understanding of the importance of the way the Quality Code is written, not only the
content but the tone and style, is important for establishing a purpose for the Quality
Code within a Regulatory Framework. Some respondents used the further
comments free text response area to query who the Quality Code was for. Others
suggested an intention for multiple audiences and gave suggestions as to how text
could be usefully produced to accommodate the various audiences.

> We note that Part A is quite complex and technical, and we believe that this
> is right. However, we suggest that it would be useful to include a very brief
> introduction for non-technical readers. The current introductory section is too
> long and detailed for those who are new to the field, and are simply seeking
> a brief overview of how standards are secured and why they can be
> confident that this is so. (Part A)

> XXX welcomes the addition of such a Chapter to the Quality Code as it
> reflects the changing landscape of the HE sector, and the changing priorities
> in the light of increased tuition fees. However, it needs to be much more

unambiguous and specific about the reasons why engagement/involvement/participation is necessary and important, and that it is a means of arriving at the end product which is to enhance students' experience and not an end product in its own right. (Consultation: Chapter B5)

I feel that this Chapter is well and concisely written. I feel it would detract from the concise and well-structured nature of the chapter to expand on the text related to each indicator or to include additional indicators. If this chapter is longer and more complex I feel it is less likely to be read, and acted upon, by a range of staff in an HEI. (Consultation: Chapter B5)

Evidence on how the style, tone and way the Quality Code was written evolved

The tone and style of how the Quality Code was written was important in asserting authority. If one purpose of the Quality Code was to contribute to a Regulatory Framework, another was to be a useful tool for enhancement. The consultative nature of the process meant appropriate changes could be made to not only the content but also the tone and style as a result of discussions with the higher education community, allowing ownership for this authority to become embedded in the text. The way the Quality Code was written is very important to the respondents to the consultations.

Whilst quality is of paramount importance for UK institutions, it is also important that the UK Quality Code for HE does not become so impenetrable that it deters HEIs and their partners from working together. (Consultation: Chapter Part A)

The phrasing and wording used throughout the document is broad and is therefore open to various different interpretations. This may or may not be problematic but, on balance, it is preferable to being overly-specific. (Consultation: Chapter B2)

We also feel that the use of terms such as 'normal practice' in the guidance paragraphs should be avoided because this terminology may unwittingly encourage unnecessary standardisation or inhibit the development of improved practices. (Consultation: Chapter B7)

The tone adopted is highly suitable. It seems to capture the right balance of responsibilities between HE providers and the learner. (Consultation: Chapter B3)

As a general comment we would also recommend that the Advisory Group review the indicators with a view to introducing more consistency of language and tone: currently some indicators are about 'providing', some are about 'making aware' and some are about 'ensuring'. There needs to be a clear definition of the various terms used throughout the consultation paper with regard to 'making available' information. Is 'publicise' different from 'publish'? (Consultation: Chapter Part C)

In creating the totality of the Quality Code as a whole rather than as guidance for specific topics, binding the parts and chapters together in a coherent way was important. The importance of using consistent language throughout the Quality Code became apparent from the consultation responses.

Some general comments having seen other areas of the Code that are currently being revised would focus on the specific wording used throughout the entire Code. I've noticed some Chapters refer to 'Higher Education institutions' whereas some refer to 'Higher Education providers'. Consistency across all Chapters would be beneficial I think. (Consultation: Chapter B11)

We suggest that the terminology within the document could be more consistent. For example, are various references to information being timely, current and up to date and it is not clear whether the intended meanings may be the same. (Consultation: Chapter Part C)

Following the completion of the development work of the Quality Code, QAA undertook a consistency review across all the parts and chapters of the Quality Code to make sure it used consistent language throughout.

Evidence about the tensions in the development of the Quality Code – aspiration compared with being about regulation

As previous comments have already shown, each of the chapters could be considered to be different to all the other chapters for various and differing reasons. However, three of the chapters appeared to differ from the other chapters in a particular way, which was illustrated by a number of comments. The difference highlighted a tension about how the Expectations were worded in these chapters (B3, B4, and B5), with Expectations considered to be more aspirational than for a regulatory function. It caused debate in the Advisory Group meetings and at the consultation events. This is evident from the comments from the consultations summarised below.

> Our overriding comment on the draft Chapter is that we are comfortable that the University and the sector are addressing the expectation and indicators of sound practice, but that we are not clear that the Chapter will give colleagues a clear sense of what to aim for. While the Quality Code is intended to set out threshold levels, it should be possible to do so while recognising more the transformational nature of learning in HE. (Consultation: Chapter B3)

> Although we acknowledge the Quality Code has been developed in such a way as to be relevant [to] a wide range of HE providers, not just universities, this has meant that most the requirements outlined will already be in place. This chapter in particular is not highly aspirational and in the main reflects current practice. Is this a lost opportunity to drive enhancement? Overall the document is comprehensive and readable. However, if the text under each of the indicators was expressed as bullet points, this may improve the presentation and usability. (Consultation: Chapter B4)

> Is the code an enhancement tool or just simply a standards tool where a certain threshold must be reached? (Consultation: Chapter B5)

> To reiterate our key points, we do not think that student engagement requires close regulation, and do not think that it is appropriate for the Chapter to be overly prescriptive. In particular, we have concerns about the use of the terms 'partner' and 'partnership', and consider that the Chapter should focus on the range and accessibility of the opportunities for student engagement which higher education providers make available, rather than

> the precise nature of the relationship between higher education providers and the student body. (Consultation: Chapter B5)

This third narrative helps to provide an understanding of the importance of the way the Quality Code was written. By considering the Quality Code in terms of not only its content but also of its tone and style, the narrative demonstrates how the Quality Code developed. There were tensions between the Quality Code providing some aspiration and hence being a useful tool for enhancement while also being clear about what higher education providers had to do and so being useful as a regulatory tool. By considering the tone and style of the Quality Code, this narrative starts to show how criteria useful for the Regulatory Framework could evolve.

Narrative four: Developing the Quality Code – engaging with what is 'mandatory'

This fourth narrative develops the theme of how criteria developed through the Quality Code could be embedded into a Regulatory Framework by considering how adherence to that framework could be monitored. The evaluation of the Academic Infrastructure (QAA 2009-11) had determined the higher education sector wanted clarity about what was obligatory. The creation of the Quality Code allowed this need for clarity to be met by stating what was 'mandatory' through the use of the terminology of 'Expectations'. However, it was important given the autonomous nature of higher education and lack of a legislative framework for regulation that these Expectations gained acceptance. Without acceptance by the higher education community, why would it have reason to comply with the requirements? By demonstrating the process of developing what became 'mandatory', this study shows the importance of the consultative nature of the development of the Quality Code and how this contributes to regulation in English higher education.

Evidence on creating what would be 'mandatory'

Many responses endorsed the idea of creating Expectations considering this would be helpful to both higher education providers and students. However, some responses were also clear that the 'mandatory' items of the Quality Code should be kept to a minimum and the autonomy of individual institutions respected.

We like the fact that the indicators are just that, indicators of sound practice only and not mandatory. Generally, the chapter is very well written with a pleasing absence of 'should' and 'could' and has an advisory and measured tone. (Consultation: Chapter B3)

Within the explanatory text, we would welcome strengthening of reference to the autonomy of individual institutions in addressing the indicators. (Consultation: Chapter B3)

The code is useful but, as it is for HEIs to determine how they fulfil the indicators, then there are some restrictions in that academics may not see certain elements as mandatory, and therefore may not have the full effect that it could have. (Consultation: Chapter B5)

The term expectations is clear in setting out those mandatory parts of the code, but much of the descriptive text is sufficiently vague so as to make it unclear whether it is expanding on the required parts of the code, or introducing new elements that would fall under the category of 'good practice'. The QAA might usefully review the chapter with this in mind. (Consultation: Chapter B7)

However, as indicated in the response to Question 3, it needs to be recognised that institutions will have well developed strategies for managing their reputations and how they present themselves and that institutional autonomy and diversity in this respect should be respected. This is not currently reflected to the extent we would wish throughout the consultation document, particularly with respect to information aimed at the public. (Consultation: Part C)

Evidence on how the 'mandatory' might be monitored

So far, I have shown how the higher education sector contributed to the development of the Quality Code. The comments below demonstrate how some of this motivation to contribute to the development comes from the use made of the Quality Code after publication. Reviewing higher education providers contributes to meeting the statutory responsibility for assessing quality. The Quality Code provided the key criteria against which providers were judged. Higher education providers are keen to achieve positive

outcomes from their reviews given their institutional reputation can be at risk from failing judgements. Responses demonstrate how higher education providers want to keep the 'mandatory' aspects to a minimum but demonstrate how they as organisations will be able to comply with the requirements.

> Our concern is that the Chapter is so wide-ranging in concept that – as it is currently written – an Institutional Review team would always be able to find an institution to be at fault in relation to one or more of the Indicators. (Consultation: Chapter B4)

> It would be useful for the Code to be clearer about the status of the supporting text for each expectation, i.e. is there also an expectation that institutions will implement all the elements of the supporting text? Will QAA institutional review teams expect to see evidence of engagement with the supporting text? (Consultation: Chapter B7)

> ...we would have been supportive of a slightly more prescriptive approach which had an element of national standards and training. (Consultation: Chapter B7)

> Furthermore, the tone of the proposed chapter is noticeably more robust, placing greater emphasis on the institutions' proactive role in providing student support. Again, the University welcomes this, and it is pleasing to note that our practices largely fall in line with what has been drafted. Once the revised chapter is published by the QAA, the University will ensure that appropriate attention is drawn to it amongst the University community. The University is, of course, more than willing to provide any further input, should it be required. (Consultation: Chapter B11)

Having contributed to the development of the Quality Code, higher education providers accept they will be reviewed against the Expectations they have helped to produce. However, they also worry about how quickly they will be required to make necessary changes to their own provision before they are reviewed. What the illustrative comments below demonstrate is that development of the Quality Code has an impact on higher education providers. Once the development process is completed and individual chapters are published, higher education providers check

that their own policies and procedures are aligned with the newly published national expectation. They then make any changes as appropriate.

Higher education providers comply with this process because it becomes more difficult for them to maintain institutional reputation if, once national expectations have been agreed through such an intensive consultative process, they are seen not to comply. The intensive development of criteria used in a subsequent review of individual providers creates a system of quality assurance. This quality assurance system is based on higher education providers own robust internal quality assurance processes and has a reliance on trust, trust that national expectations are set appropriately for the diverse community that is higher education and trust that higher education providers want to be able to demonstrate that they meet national expectations. However, it is not a system based totally on trust as all review judgements are published. These comments help to summarise this argument.

> The limited number of Indicators and the broad- based nature of the principles, is to be welcomed. This will allow HEIs to develop processes that are efficient, effective and 'fit for purpose' avoiding unnecessary burdensome process-based requirements.
> (Consultation: Chapter B1)

> There is no hiding from the fact that demonstrating compliance will be hard work for HEIs. The Chapter is very wide-ranging and involves many different parts of an institution and relates to many different sources of regulation. The resource implications are considerable. (Consultation: Chapter B4)

> As well as the lack of recognition given to this major shift, the infrastructural changes required at institutional level to deal with new processes will mean that the proposed changes could not be implemented by September 2014. (Consultation: Chapter B6)

> We note that the intention is for the revised guidance to be issued by Christmas 2012. There will need to [be] a transition period to allow institutions to digest the new chapter, before they can evidence compliance with it. Can further information be provided to institutions about by when the QAA expects institutions to have reviewed and amended their current

policies and procedures, in line with the new code chapter by? (Consultation: Chapter B10)

The Narratives

This study has presented four narratives about developing the Quality Code: engaging with the totality; the process; creating the tone and style and engaging with what is 'mandatory'. The evidence for the narratives comes from illustrative comments gathered from responses to the consultations about the Quality Code. Together these four narratives provide a picture of how the development of the Quality Code contributes to the criteria for the Operating Framework regulatory building block of academic standards and quality (see the Operating Framework diagram in appendix one). Through the example of the academic quality and standards building block, the development of the Quality Code also demonstrates how once established the building blocks have the power to work as regulation without a legislative basis.

The following comment showcases how the work developing the Quality Code was considered by respondents to be important given other changes that were happening within higher education.

> The emphasis placed on the increasing diversity of the student body is timely and signposts the direction of travel for the Higher education system under recent legislative and funding changes. (Consultation: Chapter B4)

The impact of how the consultation responses influenced the changes to the final version of the Quality Code that were published can be demonstrated by the following comment that reflects how QAA reacted to a changing higher education environment through the changed emphasis it placed on the content of Chapter B5. Originally intended to be about student representation the final version included a wider remit about student engagement.

> It is very difficult to separate our student engagement in quality processes from student engagement to enhance the educational experience. A review team would need to look at the overall process for engaging students and how the outcomes of these engagements are used to enhance the educational experience to get a true reflection of the impact this has on

provision and improving the quality of that provision. It's one thing to have a check-box that shows that students were involved in a process, however it would be much more useful to ensure that students are engaged and what the impact is of that engagement. Therefore, the indicators shouldn't just concentrate on the quality processes as quality improvements and enhancements happen as a result of wider student engagement activities. (Consultation: Chapter B5)

However, the next comment summarises some of the potential challenges to this argument.

In this response from the XXXX we have highlighted the shortcomings we see in the Chapter, but it does also contain much wise thought and many useful guidelines for practice. However, it has no real teeth. We are doubtful about it making a difference commensurate to its length and detail. What do we do about teaching, feedback, and assessment which is not good enough? 'Indicators for sound practice' are a useful starting point, but don't make up a Code of Practice. As with the previous QAA 'Precepts' the difference comes through how adherence to the Code is monitored. We question whether the higher education sector in its current competition-based form is amenable to quality scrutiny as penetrating as peer-review was in a former era of CNAA-regulated and collaborative provision. The small or vulnerable institutions may comply, but will the established players and private providers play this game? Elsewhere in the modern world, the distinction between 'Codes of Practice' and 'Regulations' remains much clearer, with the former being a helpful spotlight on the latter. Without the latter, the former is of limited value. (Consultation: Chapter B3)

In the absence of legislative framework, is there clarity between a code and regulation? Can the bonds of community in the changing landscape of the higher education environment tie higher education providers to everyday practice influence by reputation (see chapter two)? The Regulating Partnership's Operating Framework tries to offer a potential solution by using the idea of building blocks for regulation. As only one of these building blocks is about academic quality and standards, it helpfully demonstrates a boundary for the potential influence of the Quality Code. In turn, by using the terminology 'mandatory' Expectations, the Quality Code creates an authority to its contents. The next chapter considers how

this can relate to theories about social capital. However, in support of the argument, it is useful to conclude this chapter with a more detailed consideration of how the 'mandatory' Expectations were developed and how compliance with them is monitored.

Appendix ten details all the changes made to the Expectations as a result of the consultative process. The example below clearly demonstrates the extent of the changes that the consultative process could have by showing how the basis on which the chapter was premised considerably changed as result of the consultative process.

Creating a 'mandatory' Expectation: enabling student development and achievement

Table two in chapter three showed the number of respondents that agreed with the wording of each expectation and the number of comments made about that expectation. The table shows that chapter B4: Enabling student development and achievement attracted several comments and disagreement with the version of the Expectation put forward. It also prompted discussion on how aspirational the Expectation ought to be compared with providing a more regulatory standard. Chapter B4 provides a good example to explore how the impact that consultation had on the final version of the published Expectation.

Consultation version of the expectation for chapter B4

> Higher education providers have effective arrangements in place to support all students appropriately in achieving their learning objectives.

Respondents to the consultation were asked if they agreed with the wording of the Expectation and invited to make comment. Those comments were considered by the Advisory Group and used by QAA in deciding the final published version of the Expectation. As shown above, the role of the Advisory Group was seen as an important part of the process in developing the final wording of the Expectation. However, this next comment demonstrates the dimension of trust that is placed in the Advisory Group, assuming the group will make informed changes to the version of the Expectation it originally endorsed before an amended version is published.

The wording appears clumsy, and does not express the key intentions of the chapter. We are aware that many alternatives are likely to be proposed, and are content for the Advisory Group to take responsibility for the rewording, but would suggest that the Expectation could usefully include the word 'empower' (rather than support), and perhaps reference the achievement of learning potential rather than objectives, which might be misleading. This change in emphasis applies throughout the draft Chapter.

As demonstrated previously, holding public events is an important part of the process, as can be seen from the following comment. This comment shows how bringing people together to discuss their individual responses to the consultation influences how they respond, emphasising the community approach to agreeing a form of wording that will become 'mandatory' once published as a final version.

We would prefer the wording as discussed at the round table discussion in Cardiff of 'Higher Education Providers have effective arrangements in place to support and enable all students to potentially achieve their learning outcomes'. As this ensures that students are clear on their entitlement, but that it does not engender a right to succeed without their own efforts.

As the development of the process of developing the Quality Code over time continued, some myths about the process started to emerge; for example, that the Expectation was limited to being a single sentence rather than being written to be fit for purpose. This comment shows how undefined additions to the protocols for development were being used by the higher education sector (see appendix two).

In the effort to stick to the single-sentence expectation rule, a number of words have been used that require further amplification. Use of the terms 'appropriately', 'achieving their learning objectives' and 'effective' are particularly open to question. The expectation could be expanded or amplification could be provided through the use of footnotes and a glossary

The consultation responses also record the constraints that respondents considered bounded the terms of the Expectation such as shown by this comment.

We cannot support students against their will! We suggest... Higher Education providers have effective arrangements in place to encourage all students to access appropriate support to achieve their learning objectives.

The XXX believes that the expectation should recognise the possible harmful effect for students of accessing support – such as embarrassment, stigma, personal records, implications for future careers, etc. As such the expectation should include the idea of providing support 'without detrimental effect to students'. The expectation might also be more explicit about the period of time for which institutions have a responsibility to provide support – pre-entry, on course, and post-completion.

However, there were many other comments, often suggesting that the remit of the proposed Expectation had not gone far enough. In this example of developing the Expectation for chapter B4, the limitations specifically concentrated on the proposed terminology of 'learning objectives'. To remedy this, as well as providing suggestions for rewording Expectations, sometimes suggestions for a change to the title of the chapter were provided, again demonstrating a complete involvement with the process of developing the Quality Code.

The term 'learning objectives' can be perceived as somewhat ambiguous and might benefit from broadening to include personal, professional and academic objectives. Reflection of the student experience as one of partnership with academic staff, professional staff and the Student Union would more accurately reflect the strategy at XXX.

As for the title of the chapter, we are not sure this entirely captures the scope of what is meant by student support – the reference to 'achieving their learning objectives' tends to put the emphasis on the end point and academic support – when the scope of the chapter is much more than this. It may be that simply adding 'at all stages of the student life cycle' or 'student journey', would suffice to capture this broader remit.

While we are supportive of the essential expectation, we would suggest that the statement needs to be developed further to reflect the commitment to 'enabling students to achieve their learning objectives and to develop more broadly' highlighted in the opening section – Supporting student achievement.

Again, and as previously demonstrated, respondents to individual consultations were mindful of the Quality Code as a whole and how the specific consultation related to the process of developing the Quality Code as a whole entity and how in turn that related to the judgements that would be made about higher education. The Expectation provided the 'mandatory' element of the Quality Code. The linking of the Quality Code to the review process used to monitor higher education providers' quality assurance meant the role of the Expectation was becoming quite explicit and this influenced how the respondents considered the Expectations should be worded.

> The role of the expectation as a basis of judgement is weakened by the use of subjective language: 'effective' and 'appropriate'. The expectation would therefore read: Higher education providers have arrangements in place to support all students in achieving their learning objectives. There is a concern about limiting the view of student achievement in higher education to focus solely on learning objectives.

> The aims of the Expectation are supported by the University. However, there is some feeling within the University that the terminology 'learning objectives' is rapidly becoming outdated, and the sector is realising that student success cannot be measured by learning outcomes alone. Higher education success for students may be measured by a raft of indicators, including citizenship, employability, confidence, resilience and personal sustainability, transferable skills, enhanced emotional intelligence and sense of identity. These will be different for each and every student. There is a concern that the Expectation should not be seen to limit support to 'learning objectives' but must address the broader development of students.

Respondents often added a new form of words for whichever statement was under consultation either in part or fully and as demonstrated by these two comments.

> You might consider adding after effective 'properly monitored and evaluated'.

> Reword to 'Higher Education providers have effective arrangements designed to support and enable students to successfully achieve their learning objectives.'

After discussion of all the comments raised through the consultation process, the Advisory Group suggested a change to the Expectation that had been the subject of the consultation. This was agreed by the QAA Board through delegation to the QAA Directorate before the final version of the Expectation was published.

In responding to the consultation material collected (see example comment below), the Advisory Group also suggested changing the title of the chapter.

> On the whole the document is not aspirational enough. The lack of specificity in the document is very frustrating – 'support' is a very broad term (pastoral is completely different to academic which is different to career, etc.). In terms of assisting to promote and implement good practice and enhance our systems, it is a tad 'light touch' and unspecific in many areas. The word support may not always be appropriate. In terms of the actual services it should be about professional services while in relation to students it should be more about enabling, facilitating or empowering them rather than supporting. The wording and examples tend toward the less able student and do not comfortably accommodate high flyers or even the average student. It reads as for an audience of senior managers and the 'support services' but should explicitly include academics as an audience given the explicit recognition of the need for partnership working. It needs to make clear connections with the student responsibility to engage through the section on student engagement. There should be a stronger focus about listening to students and creating structures and procedures that enable this.

In March 2013, influenced by the consultation responses, QAA published Chapter B4 of the Quality Code as 'Enabling student development and achievement' compared with the original title 'Student support, learning resources and careers education, information, advice and guidance', with an Expectation that stated the following.

> Higher education providers have in place, monitor and evaluate arrangements and resources which enable students to develop their academic, personal and professional potential. (QAA Quality Code Chapter B4, 2013)

This compares with the version that was suggested in the consultation.

Higher education providers have effective arrangements in place to support all students appropriately in achieving their learning objectives.

Appendix 10 includes other examples of changes made to the wording of Expectations following consultation.

In this chapter, I have presented a series of narratives showing the process of how the Quality Code was developed. Through these narratives, this chapter has demonstrated what is meant by the consultative nature of the development of the Quality Code for higher education. The chapter has also used evidence from this process to show how it supports a contribution to a basis for regulation. Together the four narratives provide a picture of how the development of the Quality Code contributes to the criteria for the Operating Framework regulatory building block of academic standards and quality. In turn, using the terminology 'mandatory' Expectations gives an authority to the contents of the Quality Code. Through the example of developing a 'mandatory' Expectation, this chapter has also demonstrated how, once established, the Quality Code has the potential to work for regulation without a legislative basis. This is because, once developed, compliance with the Quality Code's Expectations is checked by QAA reviewers as part of the Higher Education Review (HER) review processes.

QAA publishes individual review reports and in December 2014 the key findings and judgements from the first year of HER were published in an overview report. In the academic year 2013-14, QAA completed 47 reviews. Two were of universities (University of Bradford and Leeds Beckett University) and the remaining 45 were of further education colleges that provided higher education in partnership with degree-awarding bodies. QAA commended six colleges for exceeding UK expectations. At the other end of the scale, some providers received an unsatisfactory judgement on meeting UK expectations.

The common themes identified in the reviews were that colleges could fail to recognise that higher education needed distinct management and governance systems from those needed by further education and that there needed to be a focus on the strategic not just operational approach to both enhancement and student engagement (QAA 1007 – Dec 14). This shows that the process does have the power to influence higher education providers.

Looking in more detail at the Expectation of chapter B4, QAA made eight recommendations for five different providers. This compares with 54 features of good practice identified at 32 different providers. The point being that QAA reviewers use the 'rules' once established to highlight examples of where practice both exceeds expectations and where it does not. Where Expectations have not been met, the review teams outline the action that needs to be taken by the provider and a deadline by which it must be taken. Co-ordinated by the engagement of the provider with the QAA officer, once the action taken satisfies the review team, a recommendation can be made to the QAA Board to change the published judgement to 'meets UK expectations'. QAA reported that during 2013-14 four universities had their judgements resulting from reviews in previous years amended to demonstrate they now met UK expectations. This demonstrates that changes are made as a result of the engagement of the higher education community with the Quality Code because of the QAA review process. Given the nature of the recommendations, the changes can have a direct impact on students' experiences (QAA 1007 – Dec 14).

This chapter has outlined that, without a legislative basis for the regulation of higher education, what has emerged to take the place of statute is sector-endorsed expectations judged for compliance by peer review. The following chapter explores this in greater depth. By underpinning this practice with theories about social capital, I explain how by establishing their own criteria by which they are regulated, the regulated can achieve a successful regulatory system through creating an environment of conformity based on reputational regard and civic community.

Chapter five: Conclusions and limitations of the study

This final chapter brings together the evidence presented in this study, drawing conclusions and discussing the limitations of the research. Chapter two outlined the scope of the study was the period between 2010 and 2014. This short but significant period in higher education history is bounded by the publication of the Independent Committee on Student Fees and Funding report 'Securing a sustainable future for higher education: an independent review of higher education funding & student finance' Oct 2010 (the Browne Report) and the Government response to that report through the White Paper 'Higher Education: Students at the heart of the system' published in June 2011. The Browne Report/White Paper prompted reforms to the higher education sector over the following few years. The study concludes prior to further reforms implemented following the recommendations published by the Competition and Markets Authority (2015) and as a consequence of the Review of Quality Assessment in England, Wales and Northern Ireland taking place during 2015.

While this is a short period, it is a significant in higher education history because during this time, as this thesis has shown, regulation of higher education became established in a more explicit and transparent way. In the absence of a legislative framework, the regulatory approach to English higher education was outlined by the work of the Regulating Partnerships Group (RPG) through the development of the Operating Framework (see Appendix one). This framework drew on the expertise of the higher education sector in creating an environment of regulation that was dependent on a relationship of reputation, community and trust and based on collective values of higher education rather than being based on legislation (Watson, 2007).

Becher and Kogan's work (1992) shows how formation of the values of higher education is partly dependent on a range of societal pressures from the professional community such that they suggest 'the institution has, and increasingly promulgates, its own distinctive values'. However, they suggest this is achieved by the interrelationship of these values with operational tasks or between what they call the normative and operational modes. They further suggest external professional norms are central to the formation of coherent values. Chapter four of this thesis presented

evidence of this professional expertise in a series of narratives about developing the Quality Code.

The Quality Code provided a framework or set of 'rules' (see chapter two) against which higher education can be judged by creating Expectations on academic standards and quality. These Expectations were created with the higher education sector's expertise by an independent (from government) agency. Subsequently, these 'rules' were used to monitor the sector through processes developed by that independent agency. By publishing the judgements made on higher education providers, the independent agency, the QAA, drew on the concept of reputation to provide a mechanism of ensuring compliance with the 'rules'. This demonstrates the relationship between the self- and co-regulatory system (see chapter one) that characterised the regulation of higher education in England following the Browne Report/White Paper in 2010-11 (see chapter two). The values that underpin higher education, such as social (or academic) responsibility and acting collegially to create the Expectations about higher education, are tempered by the societal pressures within the sector. However, the importance of reputation within the sector allowed an environment to develop whereby the expertise of those creating the criteria for judgements demonstrated through the narratives presented in chapter four enhanced the regulatory process.

This study presents four narratives (see chapter four). Together the four narratives provide a picture of how the development of the Quality Code contributed to the development of the regulatory landscape by providing the criteria for the Operating Framework regulatory building block of academic standards and quality.

The four narratives presented were as follows.
- Narrative one: Developing the Quality Code – engaging with the concept.
- Narrative two: Developing the Quality Code – the process.
- Narrative three: Developing the Quality Code – creating a tone and style.
- Narrative four: Developing the Quality Code – engaging with what is 'mandatory'.

The Quality Code as identified in chapter two demonstrates high level principles through the Expectations that higher education providers use when developing their own internal processes of quality assurance, which are designed to reflect their own individual missions and value systems. Through the way it was created (see chapter

three) and the use of the terminology 'mandatory' Expectations, the Quality Code created an authority to the content of a code without a legislative basis. The example in chapter four of how a 'mandatory' Expectation was developed demonstrated the role that higher education has in the process, demonstrating how the 'must do' part of a code can be accepted without a legislative basis.

The complication in creating the 'mandatory' Expectation but avoiding 'regulatory capture' (that is protecting the interests of the sector being regulated – see chapter one) is in creating Expectations that are not considered meaningless by those that have to abide by them and are sufficient to provide the protection required. The consultative process demonstrated in chapter four helps to mitigate against producing Expectations that are meaningless to a wider higher education community. Once established, the Expectations contribute to a basis for regulation demonstrated in how they are used in the review of higher education providers (see below).

In terms of 'regulatory capture' with higher education, true market conditions do not apply (CMA, 2015). For example, higher education is often a one-off experience and even if repeated, each experience is different and that experience is something that cannot be returned. Within such a diverse higher education sector, developing regulation that is considered beneficial to the whole sector is difficult to understand in terms of not being beneficial to students too. This is not that providers do not want to influence regulations but the concept of 'regulatory capture' is difficult to determine for higher education. However, the risks that could be associated such as accommodating the needs of one type of provider over another is mitigated by the process of public consultation. By subscribing to the principles of good consultation, as outlined in chapter one, and discussing with as many constituents as possible, different views can be collected. By using Advisory Groups made up of experts and representatives of a diverse sector helps to provide a balanced approach to understanding the different views. This is evidenced in narrative two.

The involvement of higher education providers in the development of their own regulation through civic communities can be explored in greater depth using theories of social capital and democratic principle (Putnam, 1993) and civic and community engagement (Watson, 2007) and related to higher education through the ideas of the normative and operational modes as developed in the Becher and Kogan work about the process and structure in higher education (1992). The final chapter of this thesis explores how the regulated (higher education providers) can

play such a critical part in producing criteria subsequently used for their own regulation and how this works successfully through creating an environment of conformity based on reputational regard and civic community. The thesis concludes with the limitations of the study and consideration for further areas of study.

Why the nature of the consultative process provides a basis for regulation

King (2013) suggests regulation in higher education has a number of purposes including:

> 'to protect the interests of students; ensuring that public funds are properly managed and that expenditure is accountable; protecting against hazards to national and global reputation of a system of higher education; facilitating appropriate institutional autonomy and academic freedom; and sustaining the standards and quality of higher education more generally'
> (King 2012 page 90)

This thesis argues that the consultative process of developing the Quality Code by the QAA provides one basis for the regulation of academic quality and standards. This is because the Quality Code was created through a process by which Expectations were developed with the higher education sector. Through its ownership of the QAA, the sector agreed to be judged against those Expectations through the review processes developed by the QAA. While the higher education sector owns the QAA, chapter two outlined how operationally the agency remained independent through the judgement it made about higher education. In part, this agreement relates back to Higher Education in the Learning Society or Dearing Report (NCIHE, 1997) and is analysed in more detail as part of my IFS (2011). In summary, the National Committee Inquiry into higher education resulted in what was known as the 'Dearing Compact'. This compact was meant to allow higher education institutions to retain their independence while increasing their financial security in return for clearer accountability (especially for standards) and being more responsive to stakeholder needs (Watson, 2007).

Stensaker and Harvey have said that accountability potentially can be seen as 'a process in which to find a level of trust between higher education and its environment' (2011). They go on to suggest that because 'the level of trust between higher education and the environment has deteriorated that many accountability schemes have been developed in various countries' (2011). Indeed, Blackmur

states 'the higher education *quality assurance* empire has grown strongly over the last 20 years. Governments legislate for higher education *quality* and establish public agencies……some of these developments have attracted a relatively small body of critical scholarship, which is routinely ignored by governments' (2010 page 67). As cited by Jarvis this describes the 'the rise of what Roger King terms the higher education regulatory state'.

Gornitzka and Stensaker (2014) suggest that the implications of the rise in interest of this regulatory state can be considered as a 'formalization of governance' that can challenge academics dominance. In many countries laws require higher education institutions to both to set up their own internal quality assurance systems and to launch systems of external audits, assessments or accreditations. Gornitzka and Stensaker go on to suggest these systems have a strong managerial and administrative components and the academics role restricted to 'technical' input. However, as Gornitzka and Stensaker describe without academic support some of the more unpopular early processes of quality assurance were exchanged for other procedures. Gornitzka and Stensaker cited the UK as an example of this explaining how the original subject level assessments were replaced by broader level institutional reviews. This example was further detailed in the work of Lucas (2014) and emphasises the importance of the academic involvement in the creation of the mechanism by which universities are regulated. Jarvis (2014) suggests currently regulation is about reporting, transparency, accountability, performance and audit cultures.

In England this clearer accountability was set to be achieved through the work of the newly created QAA, which was established through a Memorandum of Association that included members that represented the higher education sector (see chapter two). As a result of this compact, the higher education sector agreed to have judgements made about it (and published) through a review by QAA. Why the peer review approach to review works can be understood through consideration of the values underpinning higher education and demonstrated through the narratives presented in chapter four, whereby the combination of the self- and co-regulatory aspects of the higher education sector is demonstrated. This is primarily because of the value system underpinning the sector through which social capital can, as Watson describes, see 'education at all levels as a way of solidifying cohesive norms of mutually satisfying behaviour' (Watson, 2007).

There is no legislation to underpin the 'mandatory' status of the Expectations but the higher education sector, although diverse, acts as a community through engaging in the process of developing the 'mandatory'. The values of higher education include academic responsibilities to the wider higher education community, which, in turn, creates social pressures with regard to reputational regard. These pressures are such that a higher education provider not prepared to be bound by the Expectations would demonstrate that as a provider it did not have an active commitment to that community. While in many sectors this might appear a weak argument for compliance or might suggest setting the bar of 'mandatory' low, within higher education culture this is not the case.

Non-compliance would risk potential damage to reputation, as a provider not complying would not be able to demonstrate its position in relation to agreed national expectations or norms. One aspect of reputational damage is that a higher education provider with a damaged reputation risks not attracting students to enrol, which in turn decreases its income. Coupled with responsibilities to the community and a commitment to the self-/co-regulatory system, this makes for a powerful dynamic. The evidence documented through the narratives provided in chapter four shows this active participation in the development of the Quality Code.

Between the publication of the Browne Report (2010) and the BIS White Paper (2011), the final report of the changes to the Academic Infrastructure was published. This report paved the way for the development of the Quality Code (launched in December 2011) and demonstrated how QAA terminology was changing towards a more regulatory style. Following the publication of the Browne Report, the tone and language the QAA used in its material began to change and reflect the place the student had in the higher education system in a different way. This is demonstrated by the narratives presented in chapter four (in particular narrative three). Through the consultations about the changes QAA was making to the Academic Infrastructure and by using the comments from the higher education sector in its development, the Quality Code became the definitive requirement for the academic standards and quality of higher education providers. The Expectations laid out in the Quality Code became embedded in the process for the review of higher education providers, giving a framework against which higher education could be judged. As a result, the Quality Code became a tool for regulatory use.

During the evaluation of the Academic Infrastructure, QAA decided that a code of practice adequately conveyed the idea of a document in which there were both obligatory and guidance elements (QAA 2009-10). Further, QAA suggested that a code was a familiar concept used in other sectors and this would be intelligible to non-specialist audiences. While a code was not a statutory instrument requiring compliance, it was a way to state what was expected of a sector and so seemed suitable as a response to the recommendations made in the evaluation and to the changing policy objectives that needed to be implemented as a result of the White Paper (2011). The higher education sector provided its expertise to developing the technical content of the reference points used to monitor UK higher education but the process was managed not by the sector but by QAA. The technical expertise provided by the higher education sector meant the content of the code was meaningful to the sector. However, by introducing the concept of the 'mandatory' Expectations, it meant the code was able to develop a more regulatory nature. The Expectation terminology was a development from previous QAA language of 'precepts', which were used as part of the Academic Infrastructure and defined as 'precepts encapsulated the matters that an institution could reasonably be expected to address through its own quality assurance arrangements'. During the evaluation of the Academic Infrastructure, it became clear that QAA guidance needed to be clearer about what was required and what was helpful advice.

> 'The idea of setting out 'obligatory' elements within the Quality Code was generally supported by respondents, as long as it was made very clear which elements were obligatory, that these were agreed with the sector and were kept to a minimum' (QAA, 2011).

The idea of setting out what was 'obligatory' through 'Expectations' was introduced in The Changes to the Academic Infrastructure final report, which went on to define what was meant by an Expectation.

> 'This term is intended to indicate that there are certain things that higher education providers in the UK expect of each other and which the general public can expect of all higher education providers (Q'AA, 2011).

As the Quality Code developed, the concept of making explicit what had previously been implicit within the operational norms of universities and colleges was

introduced and this paved the way for the Quality Code's use in a much more regulatory way. This is demonstrated by the narratives in chapter four.

Use and alignment with the Quality Code by higher education providers is monitored through the QAA review of higher education (HER). HER Judgements are made in four areas: academic standards; academic quality; information; and enhancement. Reviewers have to make decisions using the UK Quality Code for Higher Education and the Expectations. The Quality Code outlines the primary point of reference for these decisions. All reports and judgements are published on the QAA website. This means it is possible to monitor the engagement higher education providers have with the Expectations in the Quality Code. The engagement of higher education providers in this process underlies a complex relationship, especially where a provider receives public funding, because non-compliance could mean the eventual withdrawal of funds where those funds were public money. The regulatory approach that evolved did so largely around the expenditure and protection of public money (CMA,2015) but this was at a time of increasing private provision (see chapter two).

In addition, the way public money was distributed to providers changed following the publication of the Browne Report/White Paper (see chapter two) to more reliance on student fees distributed by the Student Loans Company, reducing the regulatory power of HEFCE, which contracted QAA to complete the reviews of higher education. The White Paper (2011) also encouraged the further marketisation of higher education though promoting greater diversification in the type of provider, opening up the sector to those apparently not so dependent on public money. So, why did the engagement with the Quality Code remain important to higher education providers?

One explanation is to return to the importance of reputation within the higher education sector. Reputation can be important in attracting students and research grants and it provides prestige for those who work and study in highly regarded institutions. In the UK, a higher education provider's reputation is paramount to its success. However, there can be reputational difficulties to overcome if a provider does not conform to its own community 'rules'. With representatives of higher education providers being part of the process of developing the 'mandatory' Expectations, intellectual ownership of the Expectations moved from those who actually owned them (the QAA) through the development, maintenance and publication of the Quality Code to those who helped to shape them and would be

judged against them (the higher education community). This change in the balance of ownership created a context for reputational difficulties in not conforming. This can be explained using Putnam's theories (1993), in that by not complying the social capital represented through the social networks and relationships existing in the higher education sector are put at risk. Without the social networks and relationships that are vital to higher education operational norms, a provider's reputation is potentially at risk.

Putnam explains this with an example that it is helpful to reproduce here.

> 'Novembers here are windy, and my leaves are likely to end up on other people's yard. However, it is not feasible for neighbours to get together to bribe me to rake. The norm of keeping lawns leaf-free is powerful in my neighbourhood, however, and it constrains my decision as to whether to spend Saturday afternoon watching TV. This norm is not actually taught in local schools, but neighbours mention it when newcomers move in, and they reinforce it in frequent autumnal chats, as well as by obsessive raking of their own yards. Non-rakers risk being shunned at neighbourhood events, and non-raking is rare. Even though the norm has no legal force, and even though I prefer watching the Buckeyes to raking up leaves, I usually comply with the norm'. (Putnam, 1993 page 171)

If the 'leaves' in the above quote are replaced by 'Expectations' of higher education providers, it offers a possible explanation for how norms can underpin the social capital of a community. In higher education, there is a potential risk that if a provider contests the importance of meeting an Expectation that its community helped to create, it effectively steps outside the community. Being shunned at neighbourhood events as outlined in the quote above reflects the unknown consequences of stepping outside the community when it comes to attracting students and/or staff, which could potentially also have wider implications on operations.

If Expectations had been imposed on the higher education community without their input, the resultant requirements could potentially have been meaningless and their relationship with the Expectations would be different. In this case, it would become easier to say that those setting the Expectation did not have an understanding of what they were setting Expectations about, thereby creating an environment for potentially rejecting their need to comply. Expectations developed without consultation and

imposed might appear a tougher regulatory style more akin to having a legal basis but would not necessarily carry community support and, without a definite legal basis, would also have no way for them to be enforced. If during a review process a provider is found not to meet national expectations, it has the potential to be very damaging to its reputation, both within its own community and subsequently with a wider audience.

This possibly helps to demonstrate as Jarvis suggests 'the emergence of a cascading, multi-level; governance regime' (2014 page 161).

For example, considering a negative judgement from a QAA review report for the University of Bradford (April 2014), the reviewers' reasons for coming to their judgement were published in the review report as follows.

> 'The discrepancy the review team identified between the quality of learning opportunities available to undergraduate and taught postgraduate students and that for postgraduate research students meant that, pursuant to paragraph 19 of the published handbook, it was appropriate to differentiate the judgement between these two categories or levels. The team concludes, therefore, that the quality of student learning opportunities for undergraduate and taught postgraduate students **meets** UK expectations. Given that Expectation B11 is not met and deemed to create a moderate risk, that there are six recommendations in or related to this Expectation (most of which reflect a weakness in the operation of part of the University's governance structure), that the University's recent actions suggest that it is slow to respond and so may not be fully aware of the significance of issues in this area, but that these issues are largely confined to some schools, the team concludes that the quality of student learning opportunities for postgraduate research students **requires improvement to meet** UK expectations'. (QAA, 2014)

To limit any reputational damage, the university conformed to the suggestions about how to meet Expectations by publishing on its website an action plan. The University reviews the actions until it can demonstrate it has made the improvements needed for the University to 'meet UK expectations' and have this judgement updated.

This example shows 'community' in action within the higher education sector. Drawing on long-standing interpretations of civic humanists, Putnam (1993) explores in Making Democracy Work the importance of the 'civic community'. Putnam suggests that through active participation in public affairs a community more oriented towards shared benefits is created. He also suggests that the more citizens engage in self-government, the more 'civic' that community could be said to be. He says the following.

> 'Citizens in a civic community, on most accounts, are more than merely active, public spirited, and equal. Virtuous citizens are helpful, respectful, and trustful toward one another, even when they differ on matters of substance'. (Putnam, 1993 page 88)

Putnam suggests such a civic approach contributes to the stability of democratic government, not only because of the 'internal' effects on individuals but also because of the wider 'external' effects on the community. As demonstrated above this, can be seen in the higher education community through the example of the University of Bradford.

The civic approach can be further illustrated by the example documented by Lucas (2014) of the Economics Professors at the University of Warwick that successfully rallied in 2001 against QAA procedures 'which led ultimately to a radical overhaul of the agency and their quality assurance processes' (Lucas 2014 page 223).

As Putnam suggests, 'both States and markets operate more efficiently in civic settings' (1993, page 181). He goes on to suggest that collaboration in a civic community is not legal but moral, with sanctions for violating not penal but exclusionary from the networks of solidarity and co-operation (Putnam,1993). Therefore, looking at the use of the Expectations as expressed in the Quality Code and considering how the Code has developed has demonstrated how the Quality Code has fulfilled a role in the Regulatory Framework for higher education. The combination of self and co regulatory nature has been demonstrated through the development of the code. QAA working with the sector provides the role of an independent body that Behrens would consider to be important.

> '...there are several features to this. First where Leveson expressed disquiet at the Code used by the Press Complaints Commission having no

independent guardian, the Quality Code for Higher Education is not constructed by universities but by the QAA, an independent body, a registered charity and a company limited by guarantee... '(Behrens, 2013 page 8)

It is the development of the Quality Code by an independent body that has contributed to the self- and co-regulatory system in higher education without a legislative base.

Regulation without legal authority

Swift (RPI conference papers, 2013) spoke of regulators 'as creatures of statutes, promoting the objectives set by Parliament'. Importantly, he sees regulators as having main duties, which can be supported by a statute. He says that the regulator obtains a legitimacy and can provide the set of rules within which it works through law. The accountability of a regulator needed, he thought, to be to the elected Parliament. He suggested regulation should be seen as providing both the pragmatic solutions and principles for securing economic and social benefits. Independent regulation he suggested should be able to adapt to changes in the markets as well as being able to influence changes.

However, regulation of academic standards and quality in English higher education is not underpinned by legislation apart from The Further and Higher Education Act of 1992, which provides for a statutory responsibility for the assessment of the quality of the higher education funded by the funding councils. Following the publication of the Browne Report/White Paper the Higher Education Funding Council for England (HEFCE) became the lead regulator for the regulation of higher education in England (see chapter two). Through its creation of the Regulatory Partnerships Group and the development of an Operational Framework, HEFCE could therefore be said to have created a very close link to a regulatory function in a legalistic sense but only for those institutions that were provided with public funds.

There are 'loopholes' in the Operating Framework as the place of the alternative provider is unclear and has resulted in 'discrepancies and gaps in the way the Regulation Framework applies to different types of providers' (CMA, 2015). This is a grey area of understanding, not least because, as this study demonstrates, the role of community and civic responsibility within the higher education sector, coupled

with institutional reputation, produces a powerful force for providers to comply with Expectations on higher education that goes beyond HEFCE's public funding remit. Potentially, legislation that provided statutory powers that took account of all higher education provision powers given to one regulator could have the potential to be able to close the 'loopholes' in the present system. However, the Regulatory Partnerships Group has warned care needs to be taken in developing regulation, as there is the potential for over-regulation of the sector to stifle the ability to innovate and diversity. A complicated system is likely to have complicated regulation.

As the impact of reforms such as the new funding regime that followed the publication of the Browne Report/White Paper (2010-11) has become more apparent, it has meant questions are being raised about whether the current regulatory system remains fit for purpose. A number of reports have suggested alternative systems each requiring some form of legislative basis on which to enforce the rules of any new system. In the absence of such changes to law, this study demonstrates that the process for the codification of the 'rules' and how these 'rules' were developed for the current system of regulation for higher education in England can be successful. This provides a window on a way for potentially continuing to develop the system of regulation should the changes to law fail to materialise. This study demonstrates how regulation of academic quality and standards in higher education in England is currently a complicated balance of self- and co-regulation based on a number of building blocks represented in the Operating Framework designed to implement the policy objects following the publication of the Browne Report/White Paper.

Conclusion

This thesis provides a context for regulation (see chapter one) and shows how during the period 2010-14 regulation of higher education in England developed in the absence of legislation (see chapter two). Published Grant Letters from HEFCE to Universities have shown that previously there had been an implicit system of regulation for higher education in England. That system, reliant on self and co-regulation, became more explicit after the publication of the Browne Report/ White Paper (2010-11). Without any additional or specific legislation having been introduced, the Regulatory Partnership Group (RPG) was established by HEFCE and the Student Loans Company (see chapter two). Through the RPG's Operating Framework, a more explicit acknowledgement that academic quality and standards

was a building block of regulation was provided, helping to implement the policy objectives of the White Paper.

Academic quality and standards exist through universities own internal quality assurance (and if robust provide an element of self-regulation) aligned with national Expectations. Monitoring compliance with those national expectations is completed by an independent body, the QAA (by using criteria developed with the sector provides an element of co-regulation). This thesis shows how the national expectations were developed as part of a national code.

The study demonstrates that the development of that code helped contribute to a more explicit regulatory system, which became embedded within higher education. Without the code as one of the building blocks for the regulation of higher education, such regulation would be difficult to understand. Further, this thesis argues that if the national code had not been developed in the way it was, through a highly consultative process, given the absence of legislation something similar developed in a different way was likely to have been less effective. In particular, this was because the resultant criteria potentially risked being meaningless to the sector and, without legal sanctions, they were unlikely to be complied with.

Developing a code is about codifying 'endorsed statements' (see previous IFS 2011). It is the way that the codification is developed that gives the authority to the implementation of the codification. By testing the detail of how that codification has taken place, this thesis informs the place the codification has in the regulation of higher education (see chapter three). A key aspect of the Quality Code is the clarification of what is 'essential' in higher education stated as a series of 'UK Expectations'. The phrase 'mandatory' became associated with the Expectations. This stronger regulatory language followed the publication of the Browne Report/White Paper (2010-11) and the subsequent work of the Regulatory Partnership Group. This study has shown how the Quality Code became embedded as one of the building blocks of regulation of the Operating Framework as published by the Regulatory Partnership Group, with the mandate of the 'mandatory' coming from the way the Quality Code was developed (see chapter four).

The illustrative comments used in creating the narratives presented in chapter four developed from the comments made to the consultations organised during the development of the Quality Code provide important examples because they

demonstrate that higher education providers wanted to be part of the consultative process and took their involvement in that process very seriously. The narratives also show that by engaging with the process of developing the Quality Code, higher education providers developed their own internal quality assurance processes.

The first short narrative presented shows the importance of engaging with the totality of the concept of the Quality Code that is a code as a whole entity rather than a series of isolated elements. Establishing a broad concept about a code can provide the criteria for regulation. The third narrative extends the idea of the Quality Code being a single entity by considering how the tone and style was developed. By considering the tone and style of the Quality Code, the narrative starts to show how criteria useful for regulatory framework were developed.

The study has shown that higher education providers comply with the criteria they have made active contributions to develop because the criteria can be taken as meaningful to them. This study suggests this is because of complex relationships in the higher education sector of social responsibility, engagement with community and reputational risk. The study has argued that once national Expectations have been agreed through such an intensive consultative process, higher education providers that are seen not to comply are likely to be taking an unknown risk with their reputation and how they are seen by potential students, employers and the wider public. Ultimately, this could damage their income stream. The intensive development of criteria used in a subsequent review of individual providers creates a system of quality assurance. This quality assurance system is based on higher education providers own internal quality assurance processes and creates a culture that accepts that national Expectations are set appropriately for the diverse community that is higher education as suggested above due to the ownership of QAA by the universities. It is likely that the nature of the higher education community, with a value system dependent on a commitment to academic responsibility, makes for a system in which higher education providers contribute to, and then want to be able to demonstrate that they meet, national Expectations when reviewed. Publication of all the judgements of those in the sector when reviewed is reliant on reputational regard in not wanting to be seen to fail and helps make for a successful relationship between the self- and co-regulatory aspects of the system.

The future of the regulation of higher education, as outlined in chapter two, remains unfinished without a higher education law in response to the published White Paper

of 2011. The opening up of the market to providers not receiving public funds and, consequently, not subject to HEFCE Grant Letters and the implicit regulatory regime was partly mitigated through the development of the Operating Framework. However, without the legislative basis that HEFCE was expecting and with both the growth in private higher education provision and the imminent lifting of student numbers controls, the interest in regulation of higher education became highly topical. The Competition and Markets Authority has made a series of recommendations to government about the regulation of higher education, which include reforming the Regulatory Framework (CMA, 2015). Towards the end of 2014, HEFCE announced it was going to commence a review of Quality Assessment in England, working with its funding partners in Northern Ireland and Wales. These are indications that there is a new phase in the development of the regulation of higher education.

By January 2015, HEFCE had launched a discussion paper open for comment about the quality assessment of higher education into the future. As the feedback from the paper will shape the way higher education is assessed, it could pave the way for new higher education legislation, bringing about statutory regulation. Although it may not, the review could still form the basis for substantial change to the way higher education is currently regulated. For example, the current review process for higher education providers is a result of the Quality Assessment Review set to stop at the end of the 2015-16 academic year and what replaces it and who will deliver it remain open to debate. As part of this review process, questions are being asked about the contracting of QAA to undertake the quality assessment work for HEFCE. While through its publications the review has expressed a wish to look to improve and build on what is already in place, the extent to which changes as a result will threaten the current arrangements of self- and co-regulation is unclear. Given its ownership by QAA, the position of the Quality Code in continuing to influence the regulation of higher education as outlined in this study is therefore in doubt.

The potential challenge for higher education providers is if the open and transparent way it has previously conducted its business becomes more difficult in an increasingly marketised environment. Lucas suggests that potentially quality assurance mechanisms have 'radically changed academic work and roles in ways that can limit autonomy and challenge particular academic values' (2014 page 223).

The White Paper of 2011 appeared to allow some aspects of higher education to be able to expand, such as private colleges, without necessarily creating the environment of the Regulatory Framework that applied to higher education offered through the publicly funded routes and subject to HEFCE Grant Letters. During this period, the Quality Code offered a framework for constancy against which monitoring of all higher education could take place. The Quality Code was used to offer security to the Home Office in deciding on the Highly Trusted Sponsor Status colleges needed to recruit international students and it was used in the criteria in which the Privy Council gave degree-awarding powers. The Quality Code has a mandatory element to it, which is accepted largely because of the way it was developed, as outlined in detail in this study. However, without the open sharing of information through the consultative process, which can become more problematic in a competitive landscape, it is difficult to consider the trust on which the current system is based continuing to thrive.

Because it applied to all higher education, wherever it was provided or whoever provided it, the Quality Code provided the understanding of one of the building blocks of regulation represented in the Regulatory Partnerships Group's Operating Framework. The Operating Framework providing higher education with regulation that was established without legislation. The future of the Quality Code will be dependent on what happens following May 2015's General Election and any subsequent Higher Education Act.

However, through looking at the nature of how the Quality Code was developed, this study has demonstrated how it became embedded in the regulatory process. In the absence of any legislative framework, it is the nature of how it was developed that gives it authority in the Regulatory Framework.

Limitations to the study

This study is limited to one short period of higher education history (2010-14). This period follows a much longer history of policy intervention in higher education detailed in my IFS (Bohrer, 2011). This thesis does not attempt a policy analysis of the context before the period in which this study is set. History influenced the policy objectives set out in the White Paper 'Higher Education: Students at the heart of the system' (2011). Further work could be completed using a concept of a 'new model' of policy formation outlined by Scott (2013) in how that relates to the findings from

my IFS about the changing role of QAA in the policy process. This thesis has demonstrated through the QAA's development of the Quality Code the role it has had in implementing policy. However, QAA has also contributed to influencing and shaping policy through how the Quality Code has contributed to the basis of the regulatory landscape of higher education in England in the absence of legislation. Further aspects of QAA work could be considered from this perspective.

This study has concentrated on looking at data from the consultations carried out as part of developing the UK Quality Code for Higher Education (2011-13) through a secondary analysis. This further analysis of data provided material for the creation of narratives, which demonstrated how the production of the Quality Code became embedded in the regulatory landscape in England at this time. However, there is a limitation to this approach because the Quality Code represents all higher education across the UK, meaning further analysis following on from this study could be made about the influence of the Quality Code's development on regulation as it occurs across other nations of the UK. For example, in Wales a legislative approach is underway and it is unclear until the new law takes effect what difference this will make to the regulation of higher education in Wales compared with England and if or how the Quality Code will apply. In Scotland, a far less regulatory approach to higher education makes way for a more enhancement led approach but currently the Quality Code provides the reference point from which the annual monitoring of Scottish institutions takes place. It is again worthy of further comparative analysis with England comparing the use of the Quality Code for regulation to one of supporting enhancement.

This study argues that the process used in developing the Quality Code has contributed to how higher education is regulated in England but with regulation of higher education being complicated, this study limited its remit to only one of the possible building blocks that makes up that Regulatory Framework. This study did not look at the other building blocks of the Operating Framework apart from consideration of academic quality and standards and potentially further analysis of other building blocks and the engagement of the higher education sector in their development could be considered. This would provide further evidence of the importance of community and civic engagement coupled with reputation when further trying to understand the complex value of the relationships that underpin the higher education sector.

Consequently, it can be seen that the parameters of the study are limited in both time and geography. Even so, this study has contributed to original (professional) knowledge, as it has shown that, without legislation and statutory powers, the regulation of higher education has been a created concept. The study has attempted to explain why the system works but is limited to some extent given it is a system largely based on 'smoke and mirrors', drawing on the importance of trust. What would happen if a higher education provider did not comply with the regulation created is largely untested. This is because, with no legal basis, the sanctions available for non-compliance are minimal. Where public funds are provided, these can potentially be withheld (or access to the Student Loans Company limited) if providers can be shown as not being compliant with the expected criteria. Other laws such as those about immigration can mean the recruitment of international students could be limited or prevented for certain providers but these are only partial sanctions and even publicly funded organisations are complicated businesses dependent on different revenue streams, not just public funds.

The ability of higher education providers to award qualifications through the degree-awarding powers of publicly funded institutions cannot be removed, not without parliamentary intervention. However, they can be removed for those providers without public funding. In the past, the value systems underpinning higher education have resulted in the protection of individual providers for the good of the reputation of all and the system largely resolving issues within the system itself. However, as the landscape of higher education changes to an even more marketised approach such previous systems of self- and co-regulation may no longer be fit for purpose and the details of the consultative nature of higher education as documented in this study largely relegated to history.

Perhaps this marketised landscape and despite the unique values that make the higher education sector a community suggest that maybe comparator studies with other sectors might help to illuminate the potential ways forward for higher education regulation, especially if legislation in the next parliament does not become a reality. The Funding Council's Review of Quality Assessment does have the potential to reform the way the quality of higher education is assessed. The findings from the review have the potential to overturn the 'QAA's responsibility for looking at institutional arrangements for ensuring quality and standards of provision'. The utility of the QAA current higher education review (HER) processes is being questioned by the Review as being over burdensome for little return in the improvement of the higher education

sector. Recent HER reports have indeed been lengthy given the necessity to evidence against each of 19 Expectations before final judgements are made in four areas but whether this adds substance to the assurance in higher education is yet to be proved.

It is certainly likely that from 2016-17 the monitoring and review of higher education will be different from the way it is now. How different remains to be seen but if the QAA is not the independent agency selected to continue undertaking the reviews of academic quality and standards then potentially the Quality Code, which is owned, developed and maintained by QAA, may no longer be required or at least not in its current form. If this is the case, the Quality Code will no longer be embedded in the Regulatory Framework as described in this study. Therefore, this study represents only a moment in time. However, by detailing the process through which the nature of consultation within the higher education sector was able to provide a basis for regulation at a particular period in time, this study does demonstrate how the sector can contribute to the way criteria for its regulation can continue to be developed into the future.

Finally, this study has provided limited examples through the narratives presented in chapter four and examples of the publication of HER reports on compliance with the Expectations. However, this study has not considered the impact that the Quality Code has had. Anecdotally, the development of the Quality Code has resulted in changing practices in higher education provision, ultimately improving the experience of students. However, more work is needed to consider how the Quality Code is used by different providers and how useful the Quality Code has been. Depending on the outcomes of the Quality Assessment Review, future work on the impact of the Quality Code will be useful either to assess how the Quality Code can be further developed or to help design the reference point that succeeds it.

This thesis, coupled with future work, will help determine the place in history for the consultative nature of the development of the UK Quality Code for Higher Education and its contribution to a basis for regulation in English higher education in the absence of a legislative framework.

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Motor Codes www.motorcodes.co.uk
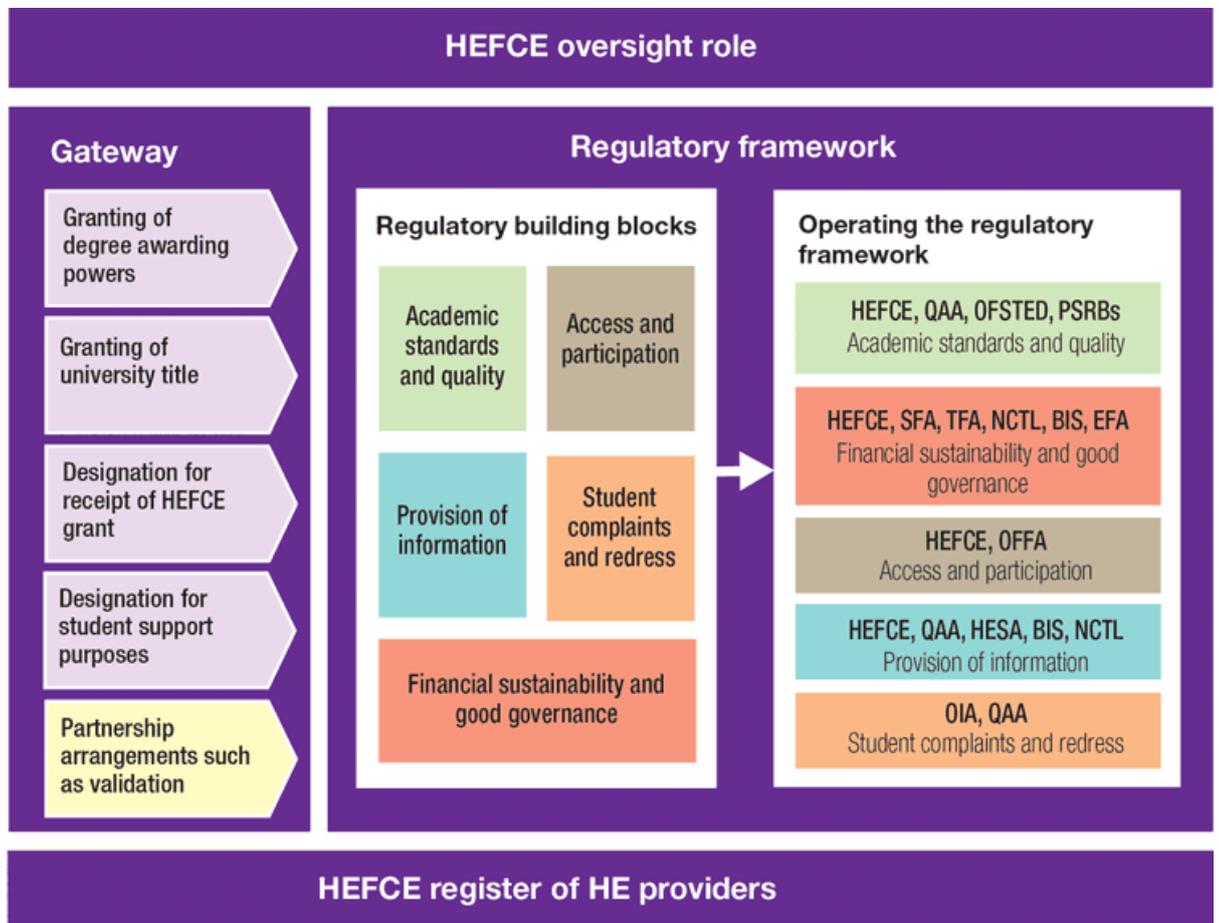
National Codes for Assured Accommodation www.nationalcode.org

Professional Standards Authority www.professionalstandards.org.uk

Resources for civil servants www.regulation.org.uk

The Regulatory Policy Institute www.rpieurope.org

Appendix one: Operating framework diagram reproduced from the Regulatory Partnership Group's Operating Framework

The complete operating framework can be found at
https://www.hefce.ac.uk/whatwedo/reg/of/.

Appendix two: The published QAA protocol for developing the UK Quality Code for Higher Education

UK Quality Code for Higher Education

Protocol for developing the UK Quality Code for Higher Education
February 2012[1]

The UK Quality Code for Higher Education (the Quality Code) is the nationally agreed, definitive point of reference for all those involved in delivering higher education programmes which lead to an award from, or are validated by, a UK higher education awarding body. The Quality Code is owned by the UK higher education sector and is published and maintained by the Quality Assurance Agency for Higher Education (QAA) on their behalf. QAA works with the sector in developing and maintaining the Quality Code, to ensure that it represents expectations on which all higher education providers are agreed. This protocol sets out how it will be developed and any major revisions implemented.[2] It is a continuation of the method used by QAA to develop and revise the components of the Academic Infrastructure. The UK Quality Code for Higher Education Steering Group is responsible for ensuring that the protocol is followed and for overall oversight and coordination of the development of the Quality Code.

The Quality Code does not incorporate statutory requirements relating to relevant legislation. It assumes that higher education providers have an overriding obligation in all cases to ensure they meet the requirements of legislation. However, where the Quality Code relates to legislative or similar obligations, efforts must be made to ensure compatibility at the time of publication.

The development and/or revision of each part and/or Chapter of the Quality Code will be coordinated by a QAA officer, supported by an advisory group which is representative of the sector. This advisory group will be made up of practitioners and students who are experts on the topic of the Chapter. The advisory group will always include at least one student representative and/or an officer from the National Union of Students. It will also include one practitioner who, as well as being an expert on the topic of the Chapter, has experience and knowledge of equality and diversity issues, and one practitioner or other representative with expertise in European and international developments in higher education.

Higher education providers and other sector representative bodies will be invited to nominate experts on the topics of the Chapters/parts of the Quality Code, from whom members of advisory groups may be drawn. However, QAA reserves the right to approach individuals directly in order to ensure any single advisory group has the right balance of expertise. Wherever possible, an advisory group will represent the four nations of the UK and different types of higher education

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[1] The substance of this protocol was originally published in *Changes to the Academic Infrastructure: Final report* (June 2011), available from www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/changes-to-academic-infrastructure.aspx. Some minor changes to wording have been made in this version for clarity.
[2] A further protocol sets out how changes to the Quality Code will be made subsequent to the initial process of development: www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/Protocol-for-revisions-to-the-Quality-Code.aspx.

provider. The oversight role of the representative steering group will also ensure that all relevant interests are taken into account.

The work of QAA and the advisory group in developing or revising a Chapter or part of the Quality Code will be supported by a public consultation with the higher education sector and other stakeholders with an interest in higher education, carried out in accordance with QAA's consultation policy.[3]

It is anticipated that the process of developing and/or revising a Chapter of the Quality Code will take, on average, one academic year to complete.

Each Chapter will be developed to a common format, which makes clear what is expected of all higher education providers. Expectations articulate what all UK higher education providers should expect of themselves and each other, and what the general public can therefore expect of higher education providers. They express key matters of principle that the higher education community has identified as important in assuring academic standards and the quality of learning opportunities. Individual higher education providers should be able to demonstrate that they are meeting the expectations effectively through their management and organisational processes, taking account of institutional needs, traditions, culture and decision-making. Indicators of sound practice suggest ways in which higher education providers may wish to demonstrate that they are meeting the Expectation. Accompanying explanations show why the Expectation is important and, where possible, give examples of ways in which the Expectation can be met.

Chapters in Part B: Assuring and enhancing academic quality should be capable of standing alone, and all Chapters should be organised around the 'student journey' or some other reasonable structure.

As each Chapter is developed and/or revised, the advisory group must assure themselves that the following principles, that underlie the whole Quality Code, are addressed in ways appropriate to the specific topic of the Chapter.

- Students have the opportunity to contribute to the shaping of their learning experience.
- All students are treated fairly, equitably and as individuals.
- Students are properly and actively informed at appropriate times of matters relevant to their programme of study.
- All policies and processes relating to study and programmes are clear and transparent.
- Strategic oversight of academic standards and academic quality is at the highest level of governance of the provider.
- All policies and processes are regularly and effectively monitored, reviewed and improved.
- Sufficient and appropriate external involvement exists for the maintenance of quality and standards.
- Staff are supported, enabling them in turn to support students' learning experience.

In addition, the advisory group will need to ensure that the following overarching themes have been considered and addressed as appropriate.

- How information about the topic is communicated to students and other relevant audiences.

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[3] QAA's consultation policy is available from www.qaa.ac.uk/AboutUs/corporate/Policies/Pages/QAA-policy-on-consultations.aspx.

- How the employability of students can be addressed in relation to the topic.
- Equality and diversity issues have been embedded throughout.
- How the topic relates to all the diverse needs of students, in particular:
  - non-traditional learners (for example work-based learners, part-time students), drawing on Section 9 of the existing *Code of practice for the assurance of academic quality and standards in higher education* (the *Code of practice*) where necessary
  - international students
  - postgraduate taught students
  - disabled students, drawing on Section 3 of the existing *Code of practice* where necessary
- How the responsibilities of awarding bodies and other higher education providers differ in relation to the topic.
- The content of the Chapter considers where the situation might differ in the four countries of the UK and makes this clear.
- The content of the Chapter aligns with the *Standards and Guidelines for Quality Assurance in the European Higher Education Area* and other European and international higher education reference points as appropriate.
- How good practice and enhancement relate to the topic, including reference to relevant publications such as Enhancement Themes and Outcomes papers, and work by the Higher Education Academy.

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All QAA's publications are available on its website www.qaa.ac.uk.

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Appendix three: Terms of reference used by QAA when establishing Advisory Groups for the development of the UK Quality Code for Higher Education

Purpose The Advisory Group provides expert advice to QAA in the development of Chapter XX: XXX of the UK Quality Code for Higher Education.

Aim
To enable the effective development of Chapter XX: XXX of the Quality Code, taking into account relevant higher education policy and practice in the UK and internationally.

Remit
- To advise QAA on the development of Chapter XX: XXX of the Quality Code as it relates to higher education policy and practice in the UK and internationally.

- To ensure that the interests of the range of providers of UK higher education are taken into account as Chapter XX: XXX of the Quality Code is developed, by identifying matters which require consideration.

- As appropriate, to provide advice to and seek guidance from the overarching UK Quality Code for Higher Education Steering Group. The Advisory Group is encouraged to raise points which require consideration in other forums, and these will be communicated as necessary by QAA officers.

Responsibilities of members
Members are expected to contribute to the development of Chapter XX: XXX of the Quality Code by contributing to discussions about its nature and scope at meetings of the Advisory Group and/or by email. Members will also be asked to comment on drafts of the text of Chapter XX, particularly when it is being finalised before consultation and publication.

Members are provided with documents and information from QAA to enable them to carry out their role. This information should not be used for other purposes.

Duration
The Advisory Group is established for the duration of the development of Chapter XX: XXX of the Quality Code, scheduled to be month – month year.

Reporting
Responsibility for the Quality Code ultimately sits with the QAA Board. The advice provided by the Advisory Group will be communicated as necessary to the QAA Board through QAA's Directorate. Operational responsibility for the Quality Code sits with the Standards, Quality and Enhancement strand of the Research, Development and Partnerships Group of QAA, whose officers' chair and provide the secretariat for the Advisory Group and report its discussions within QAA's internal performance management framework.

Membership and appointment
Members are invited to join the Advisory Group on the basis of their experience and expertise within the UK higher education sector. On the whole, members will be

expected to contribute to the discussions of the Advisory Group from their individual expert perspective, unless they are specifically invited to join the group to represent a particular body or constituency.

As far as possible, membership of the Advisory Group will represent the four nations of the UK and different types of higher education provider. The oversight role of the UK Quality Code for Higher Education Steering Group will also ensure that all relevant interests are taken into account.

Communication
Updates on the progress of the development of the Quality Code are posted on the Quality Code web portal on QAA's website.

Frequency of meetings
The Advisory Group will meet three times during the development of Chapter XX: XXX of the Quality Code. Meetings will be held in month, month and month year.

Between meetings, business will be conducted by correspondence if necessary.

Record of meetings
Formal minutes of meetings will be taken and kept in accordance with QAA's record retention policy.

Appendix four: An example of a published QAA circular letter

Copy of text from publication: CL 19/12

UK Quality Code for Higher Education, *Chapter B4: Supporting student achievement* **– draft for consultation**

Wednesday 31 October 2012
Dear colleague,

I am writing to notify you that we are now consulting on the draft content of a new Chapter of the UK Quality Code for Higher Education, *Chapter B4: Supporting student achievement.*
The focus of this Chapter of the Quality Code is on how the range of mechanisms and services higher education providers put in place enable every student, whatever their mode of learning, prior educational background or other needs, to achieve their learning objectives and make the most of their student experience. It stresses the need for an integrated, coherent and holistic approach to removing barriers to effective learning.

The Chapter is concerned with the range of different types of support which higher education providers make available for students throughout their period of study. It incorporates the guidance previously contained in the *Code of practice for the assurance of academic quality and standards in higher education* (the *Code of practice*) *Section 8: Career education, information, advice and guidance (2010)* and aspects of the *Code of practice, Section 3: Disabled students (2010)* as they relate to supporting student achievement.

The drafting of the Chapter has been undertaken with input from a wide range of experts in supporting student achievement from across UK higher education, including academics, quality assurance and educational development professionals, and student representatives. The work has been led by an expert advisory group.

We hope that this consultation process will generate lively debate and discussions about the key principles of supporting student achievement across the diverse contexts in which UK higher education takes place. We are keen to receive feedback which can be used to produce a final publication that is of value and relevance to all potential users.
We welcome contributions to this consultation from anyone with an interest in supporting student achievement in higher education in the UK, including representatives from all four countries; prospective, current and past students; staff from the full range of higher education providers, including staff who support student achievement in any way as well as staff with responsibilities for the quality assurance of that support; and from employers, who depend upon the abilities, skills and knowledge of graduates.

The consultation will be open until the end of Thursday 3 January 2013. Please submit responses through the online survey. The final version of this Chapter will be published at the end of March 2013.

We will be running consultation events during the consultation period. Please see our website for further details.

If you would like further information relating to this consultation document or the consultation process, please contact Janet Bohrer (j.bohrer@qaa.ac.uk) or Harriet Barnes (h.barnes@qaa.ac.uk).

I look forward to your response to this consultation, and to your continued engagement as the UK Quality Code for Higher Education is developed.

Appendix nine: An example of the feedback published by QAA after a consultation event

Summary report of the consultation on *Chapter B4: Enabling student development and achievement* of the UK Quality Code for Higher Education

This report summarises responses received to the consultation on *Chapter B4: Enabling student development and achievement*[4] of the UK Quality Code for Higher Education, which ran between 31 October 2012 and 3 January 2013. It provides an outline of who contributed to the consultation, and some of the key themes raised.

Event attendance

The Quality Assurance Agency for Higher Education (QAA) ran three events as part of this consultation, in Edinburgh (21 November 2012), Cardiff (26 November 2012) and London (28 November 2012). The main purpose of the events was to support higher education providers, students and other interested parties in formulating their responses to the consultation.

The table below shows attendance at the three events by organisation type.

	Higher education institutions	Further education colleges	Private providers	Sector bodies and PSRBs	Total
Edinburgh	17	2	2	0	**21**
Cardiff	26	1	2	4	**33**
London	49	2	3	1	**55**
					109

Further information on the consultation events, including presentations and a summary of the feedback from delegates, can be found at www.qaa.ac.uk/AssuringStandardsAndQuality/quality-code/Pages/B4-events.aspx.

Written responses

A total of 91 written responses were received to the consultation. The table below analyses respondents by organisation type.

Higher education institutions	Further education colleges	Private providers	Sector bodies and PSRBs	Individual	Total
71 (78%)	2 (2%)	2 (2%)	11 (12%)	5 (6%)	**91**

Key areas of interest

Respondents were generally supportive of the content of the Chapter, but highlighted a number of areas where further clarification or explanation might be

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[4] The consultation draft of *Chapter B4* was titled *Supporting student achievement*.

helpful. These points were taken into account in preparing the final version of the Chapter.

Scope, approach and title

- Greater clarity is needed on the remit of the Chapter, in relation to QAA's remit.
- The holistic and inclusive approach taken by the Chapter was welcomed, but needed to be balanced by the level of detail given.
- The Chapter could be clearer that it is about enabling all students to develop their potential, rather than just supporting those at risk of failure.
- With this in mind, the title could use 'enabling' rather than 'supporting'; the title could also reflect the fact that a higher education experience should be about more than just 'achievement' at the end of a period of study.
- Greater emphasis could be placed on how partnership working could help to achieve the aims of the Chapter, between academic departments and professional services, and between higher education providers and students.

Expectation and Indicators

- 'Learning objectives' is not the correct phrase; the value of higher education should be seen more broadly as about academic, personal and professional potential.
- The Chapter as a whole needs refocusing away from the 'traditional' model of the student experience to ensure it encompasses all students.
- There could be more reference to the need for students to engage with the opportunities provided, and of the responsibility on the higher education provider to ensure students are aware of this.
- There are a number of instances where two or more Indicators could be combined to make the Chapter more focused.

Appendix ten: Development of the Expectations

(November 2014)

Part A

Original		Published	
A: The national level	Each qualification (including those awarded under collaborative arrangements) is allocated to the appropriate level in the FHEQ or FQHEIS, as applicable.	Expectation A1 (Academic standards)	In order to secure threshold academic standards, degree-awarding bodies: a) ensure that the requirements of *The framework for higher education qualifications in England, Wales and Northern Ireland/The framework for qualifications of higher education institutions in Scotland* are met by: • positioning their qualifications at the appropriate level of the relevant framework for higher education qualifications • ensuring that programme learning outcomes align with the relevant qualification descriptor in the relevant framework for higher education qualifications • naming qualifications in accordance with the titling conventions specified in the frameworks for higher education qualifications

Original		Published	
			• awarding qualifications to mark the achievement of positively defined programme learning outcomes b) consider and take account of QAA's guidance on qualification characteristics c) where they award UK credit, assign credit values and design programmes that align with the specifications of the relevant national credit framework. d) consider and take account of relevant subject benchmark statements.
A2: The subject and qualification level	All higher education programmes of study take account of relevant subject and qualification benchmark statements.	Expectation A2.1 (Academic standards)	In order to secure their academic standards, degree-awarding bodies establish transparent and comprehensive academic frameworks and regulations to govern how they award academic credit and qualifications.
		Expectation A2.2 (Academic standards)	Degree-awarding bodies maintain a definitive record of each programme and qualification that they approve (and of subsequent changes to it) which constitutes the reference point for delivery and assessment of the programme, its monitoring and review, and for the provision of records of study to students and alumni.

Original		Published	
A3: The programme level	Higher education providers make available definitive information on the aims, intended learning outcomes and expected learner achievements for a programme of study.	Expectation A3.1 (Academic standards)	Degree-awarding bodies establish and consistently implement processes for the approval of taught programmes and research degrees that ensure that academic standards are set at a level which meets the UK threshold standard for the qualification and are in accordance with their own academic frameworks and regulations.
		Expectation A3.2 (Academic standards)	Degree-awarding bodies ensure that credit and qualifications are awarded only where: the achievement of relevant learning outcomes (module learning outcomes in the case of credit, and programme outcomes in the case of qualifications) has been demonstrated through assessment
		Expectation A3.3 (Academic standards)	
		Expectation A3.4 (Academic standards)	both the UK threshold standards and the academic standards of the relevant degree-awarding body have been satisfied. Degree-awarding bodies ensure that processes for the monitoring and review of programmes are implemented which explicitly address whether the UK threshold academic standards are achieved and whether the academic standards required by the individual degree-awarding body are being maintained.

In order to be transparent

Original		Published	
A4: Approval and review	Higher education providers have in place effective processes to approve and periodically review the validity and relevance of programmes.		
A5: Externality	Higher education providers ensure independent and external participation in the management of threshold academic standards.		
A6: Assessment of achievement of learning outcomes	Higher education providers ensure the assessment of students is robust, valid and reliable and that the award of qualifications and credit are based on the achievement of the intended learning outcomes.		

Part B

	Original version	Consultation version	Published version
B1: Programme design, development and approval;	Higher education provides have effective processes for the design and approval of programmes	Higher education providers have in place effective processes for the design and approval of programmes	Published October 2013 Higher education providers, in discharging their responsibilities for setting and maintaining academic standards and assuring and enhancing the quality of learning opportunities, operate effective processes for the design, development and approval of programmes.

	Original version	**Consultation version**	**Published version**
B2: Recruitment, selection and admission to higher education	Policies and procedures used to admit students are clear, fair, explicit and consistently applied	Recruitment and admission policies, procedures and practices are accessible, explicit and transparent: they are consistently applied and documented resulting in justified and equitable admission practices that adhere to the principles of fair admission.	Published October 2013

Recruitment, selection and admission policies and procedures adhere to the principles of fair admission. They are transparent, reliable, valid, inclusive and underpinned by appropriate organisational structures and processes. They support higher education providers in the selection of students who are able to complete their programme. |
| B3: Learning and teaching | Higher education providers implement appropriate strategies in place for learning and teaching | Higher education providers, working in partnership with their students, create and systematically review and enhance learning environments and teaching practices to provide opportunities for every student to become an active and independent learner. | Published in Sept 2012

Higher education providers, working with their staff, students and other stakeholders, articulate and systematically review and enhance the provision of learning opportunities and teaching practices, so that every student is enabled to develop as an independent learner, study their chosen subject(s) in depth and enhance their capacity for analytical, critical and creative thinking. |

	Original version	Consultation version	Published version
B4: Enabling student development and achievement	Higher education providers have effective arrangements in place to support students in their learning.	Higher education providers have effective arrangements in place to support all students appropriately in achieving their learning objectives.	Published in March 2013 Higher education providers have in place, monitor and evaluate arrangements and resources which enable students to develop their academic, personal and professional potential.
B5: Student engagement	Higher education providers have effective arrangements in place to support all students appropriately in achieving their learning objectives.	Higher education providers take deliberate steps to engage students, individually and collectively, as partners to enhance their learning experience.	Published in June 2012 Higher education providers take deliberate steps to engage all students, individually and collectively, as partners in the assurance and enhancement of their educational experience.
B6: Assessment of students and the recognition of prior learning	Higher education providers ensure that students have appropriate opportunities to show they have achieved the intended learning outcomes for the award of a qualification or credit.	Higher education providers have in place equitable, valid and reliable processes of assessment, including for the recognition of prior learning, which enable every student to demonstrate the extent to which they have achieved the intended learning outcomes for the award.	Published October 2013 Higher education providers operate equitable, valid and reliable processes of assessment, including for the recognition of prior learning, which enable every student to demonstrate the extent to which they have achieved the intended learning outcomes for the credit or qualification being sought.

	Original version	Consultation version	Published version
B7: External examining	The chapter incorporated the recommendations from the Finch Review of External examining and as the first chapter of the Quality Code to be developed had a number of Expectations which became indicators of sound practice as the format for the Quality Code developed	The development of the Quality Code happened in conjunction with the development of this first chapter therefore the original and consultation versions were one and the same and evolved to be the one published expectation.	Published Oct 2011

Higher education providers make scrupulous use of external examiners. |
| B8: Programme monitoring and review | Higher education providers have effective procedures in place to routinely monitor and periodically review programmes. | Higher education providers have in place effective processes for the routine monitoring and periodic review of programmes. | Published October 2013

Higher education providers, in discharging their responsibilities for setting and maintaining academic standards and assuring and enhancing the quality of learning opportunities, operate effective, regular and systematic processes for monitoring and for review of programmes |
| B9: Academic appeals and student complaints | Higher education providers have fair, effective and timely procedures for handling students' complaints and academic appeals. | Higher education providers have procedures for handling student complaints and appeals against academic decisions, which are fair, effective, accessible and timely. | Published April 2013

Higher education providers have procedures for handling academic appeals and student complaints about the quality of learning opportunities; these procedures are fair, accessible and timely, and enable enhancement. |

	Original version	Consultation version	Published version
B10: Managing higher education provision with others	Higher education providers have effective processes for the management of collaborative provision.	Degree-awarding bodies and other higher education providers implement and manage collaborative arrangements effectively. Degree-awarding bodies take ultimate responsibility for the academic standards and quality of learning opportunities delivered irrespective of where these take place or who provides them.	Published in Dec 2012 Degree-awarding bodies take ultimate responsibility for academic standards and the quality of learning opportunities, irrespective of where these are delivered or who provides them. Arrangements for delivering learning opportunities with organisations other than the degree-awarding body are implemented securely and managed effectively.
B11: Research degrees	Section one of the previous code of practice was used as chapter B11 in the original version of the Quality Code and this did not have an Expectation	Higher education providers award research degrees in a peer reviewed research environment that provides secure academic standards for doing and learning about research. This environment also includes an appropriate infrastructure which offers students the support and resources they need for successful academic and personal outcomes of their research degrees.	Published June 2012 Research degrees are awarded in a research environment that provides secure academic standards for doing research and learning about research approaches, methods, procedures and protocols. This environment offers students quality of opportunities and the support they need to achieve successful academic, personal and professional outcomes from their research degrees.

Part C

	Original	Consultation	Published
	As with B7 this Part was developed at the beginning of the cycle for the development of the Quality Code and therefore the original and consultation versions were one and the same	UK higher education providers produce information about the higher education experience they offer that is valid, reliable, useful and accessible	Published March 2012 Higher education providers produce information for their intended audiences about the learning opportunities they offer that is fit for purpose, accessible and trustworthy.